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Week Six

Possible County Cost-Shifts in Proposed Appropriations Bills

Both the House and the Senate passed their budgets this week, and the conference process is expected to begin next week. In an unprecedented move, the Legislature is using proviso language in the budget bills, in an apparent attempt to shift significant cost burdens to counties, especially in the realm of Health and Human Services. As the State prepares to reduce its base budget by several billion dollars, the legislature proposes to cut approximately \$1.1 billion from HHS in the House and \$800 million in the Senate. Many programs are preserved solely on the basis of funding with non-recurring dollars, resulting in the elimination of vital services from the State's base budget in FY2009-2010. In an effort to sustain some programs, the House bill generates revenue through a series of unfunded mandates, including a process of cost shifting the Medicaid match dollars to local sources. While Florida case law prohibits the use of proviso language to alter or eliminate existing programs and laws, proviso in the House bill would do so by providing for the expansion of existing programs that use the Low Income Pool (LIP) through local sources of revenue. In addition, funds expended for developmental training programs will require a 12.5% match from local sources.

HB 5085 seeks to freeze Medicaid reimbursement rates for two-years, and eliminate payments for specialized services like chiropractic and podiatry. Of particular concern is the two-year elimination of Medicaid Hospice care, along with the freeze of Medicaid reimbursement rates for providers, including inpatient hospitals, outpatient hospitals, nursing homes, county health departments and community intermediate care facilities for the developmentally disabled. The bill also proposes to expand Medicaid Reform to a variety of large urban and small rural counties, including Miami-Dade, Hillsborough, Pinellas, and Monroe, although

amendments have provided for a two-year delay in implementation. The bill has passed the House and been sent to the Senate.

Competency Restoration Process—HB 7075

HB 7075 relates primarily to the Agency for Persons with Disabilities (APD) and clarifies services provided to persons with disabilities. While the majority of provisions in the bill, and its Senate companion SB 1954, are unrelated to county operations, one provision in the House version is cause for concern. The provision relates to competency restoration proceedings which could have a significant negative fiscal impact, requiring a 15-day timeframe for the Sheriff to transport a defendant back to jail to await hearing and a 30-day timeframe for a competency hearing to be scheduled by the court. Presently, the Department of Children and Families (DCF) is responsible for offender transportation and current law does not require a timeframe for transporting an individual back to jail or scheduling the hearing.

APD is arguing that delays in transporting of defendants and scheduling of competency hearings cause fewer forensic beds to be available to new defendants who have been committed by the court and are awaiting placement. The practical impact of this new provision would be to require county resources to transport defendants out of treatment facilities and back to the court system, to allow APD to avoid waiting lists for forensic beds and comply with state law, which requires a committed person to be admitted to a forensic facility within 15 days of the court order.

The House Staff Analysis states there would be no fiscal impact for APD, and assesses the impact to local governments as indeterminate. Currently, defendants may not be moved to the county jails until shortly prior to a scheduled proceeding. Implementing a requirement to move a defendant within 15 days could result in an increased jail cost.

The indeterminate fiscal impact to local governments fails to take into consideration the obvious costs associated with transporting these individuals, not to mention the fiscal impact on the county jails where they will be housed up to 15 more days per hearing period. State forensic facilities will also bear the burden of restoring competency, only to see it degenerate during a prolonged stay in a county jail where jail health providers will be placed in the untenable position of monitoring and maintaining the stability of defendants who arrive from forensic facilities and are awaiting hearings. SB 1954 by Sen. Rich, is the similar companion and does not contain this provision. Staff is working to bring the House bill into alignment with Senator Rich's version.

Professional Sports Franchises

Amendments were adopted this week to HB 5003 and HB 5061, which are conforming bills to the FY 2008-2009 state budget. The effect of these amendments would be to suspend tax payments to local governments for the debt service associated with the construction of professional sports franchise facilities. If passed, the provision could result in a \$60 million non-recurring fiscal loss statewide, and a loss of \$2 million to Broward County.

Property Rights

HB 881 by Rep. Precourt revises the Bert Harris Act to provide that a moratorium longer than one year is automatically a permanent impact to real property, where previous cases were decided on a case by case basis by judicial determination. The bill also shortens notice periods on certain actions, requires local governments to litigate and pay claims that result from state imposed requirements, and could impact sovereign immunity. HB 881 passed favorably this week in the Safety and Security Council and now heads to the Policy and Budget Council. The identical companion, SB 1578 by Sen. Baker has not been heard.

Regional Transportation

HB 1245 by Rep. Galvano is expected to be heard in its last committee of reference, Policy and Budget Council, next week. The bill provides that 80% of the rental car surcharge revenues collected in a county within specified regional transportation authorities (RTAs) shall be deposited into the accounts of the South Florida Regional Transportation Authority (SFRTA), the Northwest Florida Transportation Authority and the Tampa

Bay Area Regional Transportation Authority. Currently revenues are deposited in the State Transportation Trust Fund to fund transportation projects in the district of collection. The bill also eliminates the funding obligation for capital, operating and maintenance expenses of SFRTA by the three participating counties.

SB 1512 by Sen. Geller, is similar, but applies only to the South Florida Regional Transportation Authority. It has not yet been heard in any of the five committees of reference.

Growth Management Legislation

The House Economic Expansion and Infrastructure Council unveiled a working draft of its growth management bill on Wednesday. The bill makes a number of changes relating to growth and development in Florida. Some of the primary areas addressed in the bill relate to removing constraints to development within urban areas, addressing transportation concurrency issues, and facilitating rural economic development. The bill also provides expedited review of comprehensive plan amendments for three types of activities: amendments in urban areas, amendments associated with targeted economic development in rural areas, and amendments containing affordable housing proposals. In addition, the bill makes other changes relating to comprehensive planning, developments of regional impact, and community redevelopment issues. The proposed council bill, EEIC 08-07, was considered on Friday and approved with Broward County's DRI threshold change for hotels included in this final version. The bill is expected to be referred to the Policy and Budget Council for consideration.

The Senate Community Affairs Committee this week also considered its proposed growth management legislation, SB 474 by Sen. Garcia. The Committee adopted a new strike-all amendment and Senators withdrew all other amendments that sought changes to the strike-all. Senators Garcia and Geller agreed there would be continued work on the bill to address many of the concerns raised with its various provisions. The bill passed with a 10-0 vote and now goes to the Senate Transportation and Economic Development Appropriations Committee.

Aggregate Mining Bills Considered

The Senate Community Affairs Committee and Senate Environmental Preservation and Conservation Committee this week considered bills relating to construction aggregate materials' mining. SB 2406 by Sen. Bennett prohibits local governments from enacting or enforcing any ordinance, resolution, regulation, rule, policy or other action that prevents the construction or operation of a limestone mine on lands where mining is a permissible use or on lands zoned or classified as mining lands on or after March 1, 2007. The bill further provides an expedited permitting process for environmental resource permits that are issued by the Florida Department of Environmental Protection (DEP). A strike-all amendment providing for a strategic aggregate resource assessment (SARA) process, imposing review standards for DEP mine permitting, and preempting local environmental reviews and permitting ran into substantial opposition from a majority of Senators on the committee. As a result, the bill sponsor temporarily postponed consideration of the bill when it was clear there existed sufficient votes to defeat the bill. The bill will likely be considered again next week.

In the Senate Community Affairs Committee, a different outcome resulted with the consideration of CS/SB 774 by Sen. Baker. This legislation defines the term "aggregate resource county" based on the list adopted as part of the final report issued by the Strategic Aggregates Review Task Force in February, which includes Broward County as a limestone resource county. The bill creates legislative intent concerning the importance of construction aggregate materials to the state and imposes a supermajority vote to "deny" a mining application; approval only requires a majority vote. If a local government fails to make a decision on a mining application within two regularly scheduled meetings at which the application is considered, or within 3 months after the application is first considered by the governing body, the applicant can seek a final determination from the Governor and Cabinet sitting as the Administration Commission. FAC President-Elect, Commissioner Randy Hatch and Lee County Commissioner Tammy Hall spoke in favor of the bill. The bill now moves to the Senate Environmental Preservation and Conservation Committee, where it is expected mining interests will seek to combine the bill with the provisions of SB 2406.