Property Rights Bills Continue

HB 383 – Private Property Rights, by Rep. Edwards, creates a cause of action for landowners to recover monetary damages where local governments place conditions upon property that lead to unconstitutional exactions. The bill was amended to change monetary damages to injunctive relief, exempts impact fees, and requires the landowner to notify the local government before filing suit. The bill overwhelmingly passed the House Judiciary Committee and now moves to the House floor. The Senate measure, SB 284, by Sen. Diaz de la Portilla, will be heard this week in the Senate Appropriations Subcommittee on General Government.

Civil Citation Ready for Floor

SB 378 – Juvenile Justice, by Sen. Garcia, was retained on Special Order for next week’s Senate session. The bill gives discretion of law enforcement officers to issue multiple citations to juveniles in lieu of arrest, including notification of the minor’s parents or requiring attendance in a diversion program. An amendment by a co-sponsor specifies there be a total of three civil citations issued before an arrest must be made. HB 99, by Rep. Clarke-Reed waits to be heard in the Judiciary committee, its last committee of reference.

Gaming Bills Move through Both Chambers

SB 7088 – Gaming, by Regulated Industries, was an attempt to extend the Seminole Tribe’s exclusive offering of banked card games, such as blackjack, for one year. The current compact with the Tribe ends on July 1, 2015 and the measure would have allowed more time for negotiations between the two parties. However, during the Senate Regulated Industries meeting on April 8th, various amendments were added to the bill. Sen. Sachs successfully amended the bill to “decouple” dog racing from other forms of gambling. Under current law, permit-holders of jai-alai, greyhound racing, and horse racing licenses must hold a defined amount of competitions in order to satisfy permit requirements for card rooms and slot machines (where legal). The amendment, which has also been filed as stand-alone legislation, passed by a vote of 7-5.
Subsequent amendments allowed for jai-alai and horse racing operators to decouple from those types of gaming as well. The bill was also amended to allow Lee and Palm Beach counties to offer slot machine gaming as well.

On April 9th, the House Regulatory Affairs Committee heard HB 1233, by Rep. Young, which originally allowed for destination resort casinos in South Florida. After polling the members, the sponsor amended her bill to reflect the same decoupling efforts in the Senate. However, the bill only allows for greyhound racing decoupling and does not extend to jai-alai and horse racing. The bill was also amended to allow slots in Palm Beach and Lee counties. Most surprisingly, the bill was also amended to include a provision which would allow a non-binding referendum in both Broward and Miami-Dade Counties. The referendum must be completed before December 31, 2016 and the ballot language must be as follows:

“A Destination Resort is defined as a free-standing land-based structure in which Class III casino gaming may be operated and which also consists of a combination of various tourism amenities and facilities, including but not limited to hotels, villas, restaurants, gaming facilities, convention and meeting facilities, entertainment facilities, attractions, service centers, and shopping centers. Examples of Class III casino games include slot machines, poker, banked card games, roulette, craps, and banked games using a wheel, dice, tiles, or other equipment.

SHOULD THE OPERATION OF A DESTINATION RESORT, AS DEFINED ABOVE, BE AUTHORIZED IN ________ COUNTY subject to a minimum private capital investment of $1.5 Billion by the operators of the proposed Destination Resort? YES / NO”

It is unclear how the Legislature will move forward on these two gaming bills.

Local Construction Preference Bills Continue Through Both Chambers

HB 113, by Rep. Perry, would prohibit local governments from enforcing local preference ordinances if at least 50 percent of state funds pay for the project. Local governments and unions oppose the bill. The bill barely passed its final committee of reference by a vote of 10 to 8 and is now headed to the House floor. Its companion, SB 778, by Sen. Hays is waiting to be heard on the Senate floor.

Growth Management Package Passes House Panel

Despite opposition from local governments and environmentalists, HB 933- Growth Management, by Rep. La Rosa, passed the House Transportation and Economic Development Appropriations Subcommittee. The bill essentially deletes the current developments of regional impact (DRI) review by the state. This process examines how traffic patterns may be affected by developments in neighboring areas. While Broward County has been exempted from the DRI process since 2009, other counties and cities undergoing developments argue that the process ensures model
planning. While there is no companion measure in the Senate, SB 562, by Sen. Simpson, would require that new developments undergo state coordinated review instead of DRI review. It is currently unclear how the chambers will advance each piece of legislation.

**Guns on Campus Legislation Appears to Stall**

Citing a lack of chamber-wide support, Sen. Diaz de la Portilla has publically acknowledged SB 176 – Licenses to Carry Concealed Weapons or Firearms by Sen. Evers is likely dead for the 2015 Legislative Session. As Chair of the Senate Judiciary Committee, Sen. Diaz de la Portilla said he doesn't plan to have the proposal go before his committee, which would effectively kill the bill. The controversial measure would allow people with concealed-weapons licenses to carry guns on the campuses of Florida colleges and universities. SB 176 would need to clear the Senate Judiciary and Rules Committees before heading to the Senate floor. The House companion, HB 4005, by Rep. Steube, is ready to be heard on the House floor.

**Senate Advances TNC Insurance Requirements**

SB 1298 – Insurance for Short-Term Rental and Transportation Network Companies, by Sen. Simmons, moved again passing the Senate Appropriations Committee. SB 1298 seeks to establish minimum insurance requirements for short-term rental network (STR) and transportation network companies (TNC). The bill was amended to require drivers operating under the TNC application to carry commercial liability insurance 24/7. Representatives from TNCs, such as Uber, have argued the insurance coverage should only be required to kick in when a driver is actually transporting passengers. As such, Uber is against this bill. SB 1298 now heads to the Senate floor while HB 757 by Rep. Hager, the House companion, is likely dead as it has not been heard in any of its committees of reference.

**Senate Water Package Amended in Committee**

SB 918 – Environmental Resources, by Sen. Dean was amended multiple times on Wednesday, April 8th by the Senate General Government Appropriations Subcommittee. SB 918 provides for the protection of springs and other water resources in Florida, creates a council to provide recommendations for funding water projects throughout the state, provides transparency for the process by which projects are submitted and selected, and provides for statewide consistency in data collection and analysis.

The bill also directs the Department of Environmental Protection (DEP) to promote access to conservation lands using an online database and mobile application. The bill requires the DEP to submit a yearly report to the Governor, the President of the Senate, and the Speaker of the House of Representatives describing the percentage of public lands open to the public that were acquired under §259.032, F.S., and efforts taken by the DEP to increase public access to such lands.
The bill creates the Shared-Use Nonmotorized Trail (SunTrail) network and directs the Florida Department of Transportation (FDOT) to create a SunTrail plan and include the SunTrail in the FDOT work program. The bill also provides for sponsorship of the SunTrail network. SB 918 codifies the Central Florida Water Initiative, which is a collaborative process designed to plan for future water needs in central Florida. The bill makes extensive revisions to the Northern Everglades and Estuaries Protection Program.

Of interest, SB 918 was amended to require the South Florida Water Management District (SFWMD) to select a project capable of providing environmental and water supply benefits within the lower east coast, from those in their regional water supply plan and implement the same. The implementation could be in partnership with local governments, as part of a public private partnership or on their own. Once the water supply is created, the SFWMD is directed to wholesale (at cost) the water to utilities which secure consumptive use permits. The language makes the C-51 project an extremely competitive project to be selected for state approval and funding. This would allow the cooperating local government to overcome the short term gap in allocation commitments and permit the project to move into the implementation phase immediately upon approval by the Governing Board. Additionally, the amended bill requires the District provide priority consideration for any state funds allocated by the Legislature for the selected project.

SB 918 next heads to the Senate Appropriations Committee.

Mental Health Reforms Continue to Take Shape

CS/SB 7070, by Sen. Garcia, integrates the Marchman Act, which provides substance abuse intervention, clinical treatment, and recovery support services, into the Florida Mental Health Act, more commonly known as the Baker Act. On April 7th, the Senate Judiciary Committee considered the bill and unanimously approved a committee substitute. Among the significant changes made by the Committee, the Committee Substitute:

- **Adds Broward County, Seventeenth Judicial Circuit, to the Forensic Hospital Diversion Pilot Program.**
- Reinstates current law to prohibit an individual with mental illness who has not been charged with a crime from being detained under the Baker Act in a jail setting.
- Creates the Nonviolent Offender Reentry Program to divert nonviolent offenders with substance abuse impairment from serving lengthy sentences through a partial service of sentence and referral to a reentry program.
- Adds substance abuse evaluations to evaluations that may be performed by a receiving facility within 24 hours after arrival by the individual in need of intervention and adds substance abuse professionals to the list of professionals who may evaluate the individual.
- Requires a law enforcement officer to notify the nearest relative of a minor taken into protective custody that the minor has been taken into protective...
custody.

- Requires a public school principal or the principal’s designee, including those at charter schools, to immediately notify a student’s parent, guardian, guardian advocate, or caregiver if a student is transferred from the school environment to a receiving facility for an involuntary examination, unless a report has been provided to the child abuse hotline, in which case notification may be delayed for up to 24 hours.

- Requires a receiving facility to immediately notify, and repeatedly attempt to notify until contact is successful, a minor’s parent, guardian, caregiver, or guardian advocate, in person, by phone, or by electronic communication, unless a report has been provided to the child abuse hotline, in which case notification may be delayed for up to 24 hours.

- Clarifies that a psychiatric nurse may examine an individual held for an involuntary examination at a receiving facility or approve the individual’s release during the involuntary examination period, only in coordination with a psychiatrist and within the framework of an established protocol.

- Expands the definition of a psychiatric nurse to additionally require a national advance practice certification as a psychiatric-mental health advance practice nurse.

- Authorizes an osteopathic physician, as a mental health professional, to provide care and treatment in accordance with an individual’s advance directive.

CS/SB 7070 now goes to the Senate Appropriations Committee.

HB 7119, by Rep. Harrell, makes changes to the statewide system of safety-net prevention, treatment, and recovery services for substance abuse and mental health administered by the Department of Children and Families (DCF). On Thursday, April 9th, the House Health & Human Services Committee voted unanimously to a committee substitute which, according to the sponsor, Rep. Harrell, reflects a comprehensive work in progress to create a more regional coordinated care system for substance abuse and mental health services in Florida. Among the changes the Committee approved, the bill:

- Adds changes to hearing procedures for involuntary inpatient placements.
- Adds legislative findings supporting the delivery of behavioral health services through a coordinates care system.
- Requires the Department of Children and Families (DCF) to work through Managing Entities (ME) to develop delivery strategies that will improve the coordination, integration and management of the delivery of behavioral health services.
- Requires MEs to transition to "Coordinated Care Organizations" (CCOs) and prescribes standards for CCOs.
- Modifies the governing board membership similar to SB 7068, and prohibits providers and community organizations who contract with ME from serving on an ME’s governing board.
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• Requires DCF and the Agency for Health Care Administration to develop a plan for modifying licensure statutes and rules to develop a single, consolidated license for providers that offer multiple types of mental health and substance abuse services regulated under Chapters 394 and 397, F.S.

HB 7119 will now be placed in the House Calendar for future consideration by the full House. A similar Senate bill, SB 7068, will be considered by the full Senate on Tuesday, April 14th.

House Passes Comprehensive Tax-Cut Package

On April 9th, the House passed a $690 million tax-cut package by a vote of 112-3. The bill’s biggest fiscal makeup is the reduction of taxes on cellular phone and television taxes estimated around $470 million. The bill also re-enacts back-to-school holidays, and creates a new sales tax exemption on weapons, ammunition, fishing gear and camping tents on July 4th. There is currently no similar tax-cut package in the Senate and this bill will be used during the conference process.

Protection Against Pregnancy Discrimination Headed to Floor

SB 982, by Sen. Thompson, and HB 625, Rep. Cortes, seek to codify the Florida Supreme Court's decision last year that the Florida Civil Rights Act of 1992's (FCRA) prohibition of sex discrimination in employment also includes a prohibition of discrimination based on pregnancy. SB 982 unanimously passed the Senate Rules Committee on Thursday, April 9th, and HB 625 passed its last committee during the 5th Week of Session.

The FCRA was enacted to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status...” in places of public accommodation and employment. The Act was patterned after Titles II and VII of the Civil Rights Act of 1964, but providing even broader protections. Title II of the federal Civil Rights Act of 1964 (Title II) prohibits discrimination on the basis of race, color, religion, or national origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment. Title VII of the federal Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. In 1978, Congress amended Title VII (by enacting the Pregnancy Discrimination Act) to specifically include discrimination based on pregnancy, childbirth, and related medical conditions as prohibited forms of sex discrimination in employment.

However, although Title VII expressly includes pregnancy status as a component of sex discrimination in employment, the FCRA does not. The fact that the FCRA is patterned after Title VII but does not expressly prohibit discrimination based on pregnancy status caused division among both federal and state courts as to whether the Florida Legislature had intended to provide protection on the basis of pregnancy status in employment. In 2014, the Florida Supreme Court decided Delva v. Continental group, Inc., 137 So.3d 371 (Fla 2014) (Delva II), holding the
statutory phrase making it an "unlawful employment practice for an employer... to discriminate...because of...sex, as used in the FCRA, includes discrimination based on pregnancy, which is a natural condition and primary characteristic unique to the female sex." The Florida Supreme Court's decision in Delva II overturned an earlier decision of the Third District Court of Appeal, by the same name, which held the FCRA did not prohibit discrimination based on pregnancy. The Supreme Court's decision, however, did not address whether discrimination based on pregnancy is subsumed within the FCRA's prohibition against sex discrimination in places of public accommodation.

SB 982 and HB 625 codify the Florida Supreme Court's decision in Delva II by amending the FCRA to expressly provide that discrimination on the basis of pregnancy is a prohibited employment practice. The bill also amends the FCRA to prohibit discrimination on the basis of pregnancy in places of public accommodation. Accordingly, pregnancy is afforded the same protection as other protected classes identified in the FCRA. A woman affected by pregnancy may not be discriminated against by places of public accommodation, or in employment provided the discriminatory act constitutes an unlawful employment practice.

SB 982 is on the Senate's Special Order Calendar for floor consideration on Tuesday, April 14th. HB 625 is on the House calendar waiting to be scheduled for floor consideration.

Conscience Protection for Private Child-Placing Agencies Passes House

Last week, the House considered and passed CS/HB 7111, by Rep. Broduer, on a 75-38 vote. The bill amends §409.175, F.S., to create an adoption services conscience protection law that allows private child-placing agencies and family foster homes affiliated with the agencies, to object to performing, assisting in, recommending, consenting to, or participating in the placement of a child, if the placement violates the agency’s written religious or moral convictions or policies. The bill is largely seen as a measure designed to protect adoption agencies that have religious or moral objections to placing, or otherwise facilitating the adoption of, children with LGBT individuals and families.

The bill prohibits state and local government agencies from withholding licensure, grants, contracts, and ability to participate in government programs from those agencies that object to performing adoption services required for the placement of a child or to facilitate the licensure of a family foster home, if the placement or licensure violates the agency's written religious or moral convictions or policies. Private child-placing agencies who exercise the conscience protections under the statute are not subject to claims for injunctive relief, compensatory damages or punitive damages.

During floor consideration, the House amended the bill further to provide a private child-placing agency's actions under the statute do not constitute discrimination.
The bill was also amended to expressly preempt the regulation of conscience protection for private child-placing agencies to the state, and voids any provision of law, ordinances, regulation, rule or policy of any state agency, county, municipality, or other political subdivision that contravenes or restricts a child-placing agency’s exercise of its conscience protection rights under the statute.

The bill now goes to the Senate where there is no companion measure, and its fate is uncertain.

**DJJ Cost Share Plan Stalls in House, Moves in Senate**

SB 1414, by Sen. Bradley had required non-fiscally constrained counties pay 60 percent of secure detention costs beginning July 1st, however an amendment filed on April 8th, changed the cost share percentage responsibility in line with HB 5201. As amended, counties will be responsible for 57 percent of secure detention costs, while the state would be responsible for only 43 percent of such costs. The amendment also includes a provision that requires the Department of Revenue (DOR) to review and ensure each county can meet its cost share obligation.

The DOR is authorized to withhold revenue sharing payments from any county that fails to pay their monthly cost share obligation to the Department of Juvenile Justice (DJJ). The Senate Criminal and Civil Justice Appropriations Subcommittee unanimously approved the amended bill. SB 1414 is now in Senate Appropriations.

As for HB 5201, the bill continues as unfinished business on the House calendar, having been temporarily postponed during consideration on April 1, 2015.