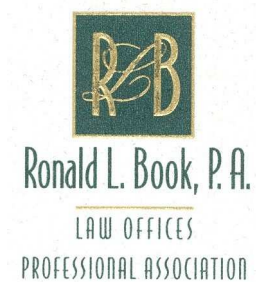


# Florida Legislature

## 2009 Regular Session Final Report

### Growth Management, Water and Natural Resources



**END OF SESSION LEGISLATIVE REPORT**  
**2009 REGULAR LEGISLATIVE SESSION**

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## INTRODUCTION

As we have reported throughout the 2009 Special and Regular Sessions, this has been a difficult year for the Legislature in dealing with the downturn in Florida's economy and the resulting shortfalls in revenue. Although program funding was significantly reduced or, in many cases, eliminated, we are pleased to report successes with many of our legislative priorities.

The Regular Session will most probably be remembered for its fast-paced beginning and for what ultimately was withdrawn from consideration. Against the backdrop of landmark national elections and a need to stimulate the economy, the Florida Senate moved aggressively to eliminate perceived impediments to economic recovery, specifically focusing on environmental and growth management regulations. Several hearings were scheduled early in the Session, and legislation was proposed that would expedite the review and approval of land development activities throughout the state. After being inundated with opposing views, however, both chambers appeared to slow their pace, eventually adopting less comprehensive changes in the final week of Session (*See SB 360, infra*).

There were early fireworks in the environmental arena as well, as the South Florida Water Management District's proposed acquisition of U.S. Sugar Corporation's lands south of Lake Okeechobee for an estimated \$1.2 billion dollars garnered significant media attention and criticism. This attention caused the Legislature to focus on the use of public funds by state agencies, and the tenor that was set may have contributed to the defeat of the highly controversial DOT purchase of approximately 61 miles of rail in Central Florida for a commuter train known as "SunRail."

A substantial portion of the Session was dedicated to the debate over whether to tap controversial sources of revenue, including: taxes on bottled water and cigarettes; a gaming compact with the Seminole Tribe of Indians; increased tipping fees on solid waste; eliminating sales tax exemptions, and even a late proposal to permit natural gas and oil exploration off the Florida coast.

In sum, 2,369 bills were filed, with only 271 being passed by the full Legislature. Of these, 235 are general bills and 27 are local bills. In addition, there were 4 concurrent resolutions, 3 joint resolutions, and 2 memorials that passed both chambers. This was the smallest number of bills passed in over ten years. According to press reports, an average of 422 bills passed between 1998 and 2008.

Recognizing the hard work of our team of colleagues, we present this End of Session Report with summaries of the enrolled bills on which Ronald L. Book, P.A. and The WREN Group focused its attention. For additional information on any of these bills, please contact Ronald L. Book, P.A. at 305/935-1866 and the WREN Group at 866/500-9736.

*NOTE: This report provides the House and Senate bills in numeric order. The Governor has not taken action on these bills yet; some may be vetoed. If you wish to read any of the legislation, visit the Legislature's Online Sunshine website at [www.leg.state.fl.us](http://www.leg.state.fl.us) and refer to the "enrolled" version of the bill, which is the final version incorporating all amendments*

## APPROPRIATIONS

### **SB 2600 – General Appropriations Act**

As the Regular Session approached its closing, the differences in fiscal philosophy led to vastly different proposals in both chambers on how to balance the record \$6 billion shortfall in revenues. The Senate budget relied heavily on new revenue sources, while the House proposed deeper cuts to state programs. This conflict resulted in a one-week extension of the Regular Session. In the end, the Legislature approved a \$66,536,360,098 budget, which included \$25,130,871,697 in pass-through federal funding and local aid.

Environmental and natural resources were among the hardest hit by the cutbacks, with several programs being eliminated entirely from this year's budget. Below is a summary of funding levels for some of these programs.

	<u>SB 2600</u>	<u>Avg. Historic Level</u>
Florida Forever	0	300,000,000
Everglades Restoration	50,000,000	100,000,000
Local Water Projects	0	100,000,000
Drinking Water Revolving Loans	*89,474,000	63,000,000
Wastewater and Stormwater Revolving Loans	*163,386,374	90,000,000
Invasive Plat Control	26,290,647	38,000,000
Beach Restoration	15,000,000	32,000,000
Underground Petroleum Tank Clean-up	90,000,000	130,000,000

\* Includes significant federal stimulus dollars.

The General Appropriations Act includes critical funding for the Regional Planning Councils at \$2.5 million. The WREN Group and Ronald L. Book, P.A. were extremely focused throughout the entire session on the RPC funding item. In the budget, the \$2.5 million in funding is a significant increase over the Governor's recommendation. We have also secured commitments from legislative leadership to work during the interim and coordinate efforts on finding a dedicated revenue source for the RPCs for next session.

## SUBSTANTIVE LEGISLATION

### **HB 0029 - Unlawful Use of Utility Services**

This bill adds a first degree misdemeanor offense (amended from a third degree felony) to § 812.14, for the theft of utility services which facilitates the manufacture of controlled substances, and for a property owner who leases a property to a tenant or occupant whom they know or should have reasonably known is using utility services for such purpose. The bill also provides a list of factors that constitute *prima facie* evidence of a person's intent to commit theft of utility services for such purpose.

Effective Date: October 1, 2009

### **HB 0073 - Expedited Permitting for Economic Development Projects**

This bill requires the Department of Environmental Protection (DEP) and the water management districts to adopt programs that create a 45-day expedited process for wetland resource and environmental resource permits associated with businesses identified by municipalities or counties as target industry businesses. Projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund are exempt.

The bill requires a mandatory pre-application review process to reduce permitting conflicts by providing guidance regarding permits needed, site planning and development, site limitations, facility design, and steps the applicant may take to ensure expeditious permit application review. Permit applications for projects in a charter county with a population of 1.2 million or more which has entered into a delegation agreement with the DEP or water management district are eligible for expedited permitting only upon designation by resolution of the charter county's governing board.

Effective Date: July 1, 2009

### **HB 0127 – Enterprise Zones**

This bill creates an opportunity for the city of Ocala to apply for and receive an enterprise zone designation. The proposed enterprise zone may be located in Ocala's west end and be up to 5 square miles in size. Ocala is directed to file its enterprise zone application with the Office of Tourism, Trade and Economic Development (OTTED) by December 31, 2009.

Effective Date: January 1, 2010

### **HB 0227 – Impact Fees**

This bill changes the burden of proof when considering challenges to impact fee ordinances. Under current law, the courts will uphold an ordinance adopted by a local government against a person challenging the adoption of the ordinance if there is any "fairly debatable" cause for upholding the ordinance – a difficult standard to overcome.

This bill requires that, should any person challenge an impact fee, the government entity that enacted the ordinance must show by "a preponderance of the evidence" that the imposition or amount of the fee meets the requirements of legal precedent or law. This bill also provides that the court may not use a deferential standard of review.

The full Senate amended the bill to remove the House prohibition on increasing impact fees except when pledged to the retirement of debt.

Effective Date: July 1, 2009

## **SB 0360 - Growth Management**

This bill is the major growth management legislation passed during the session. The 82-page bill is entitled the “Community Renewal Act.” Major elements of the bill (grouped roughly by topic, not necessarily as they appear by section in the bill) include:

### New Definitions of “Urban Service Area” and “Dense Urban Land Area”

- The bill revises the definition in § 163.3163(2) of an “existing urban service area” and changes the definition to “urban service area.” The new definition requires urban service areas to include central water and sewer capacity (as opposed to “sewage treatment systems presently in statute”) and roads already in place or committed in the first 3 years of the capital improvement schedule. The new definition also deletes the existing requirement for schools and recreation areas. The new definition also ties in with the “dense urban land areas” defined by the bill (for more about that definition see below), and would establish that for counties that qualify as dense urban land areas, “the non-rural area of a county which has adopted into the county charter a rural area designation or areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009 are also urban service areas.”
- The bill defines “dense urban land area” as:
  - (a) A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
  - (b) A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or
  - (c) A county, including the municipalities located therein, which has a population of at least 1 million.
- The Office of Economic and Demographic Research (EDR) within the Legislature is required to “annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to § 186.901.”
- If any local government has had an annexation, contraction, or new incorporation, EDR is to determine the population density using the new jurisdictional boundaries as recorded in accordance with §. 171.091.
- EDR is required to submit to the state land planning agency (the Department of Community Affairs – DCA) a list of jurisdictions that meet the total population and density criteria necessary for designation as a dense urban land area by July 1, 2009, and every year thereafter, and DCA is required to publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that qualify or do not qualify as a dense urban land area is effective upon publication on the DCA’s Internet website.

## School Concurrency

- The bill authorizes DCA to allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed 10 percent, when the projected 10-year capital outlay full-time equivalent student enrollment is less than 2,000 students and the capacity rate for all schools within the school district in the tenth year will not exceed the 100 percent limitation.
- The bill eliminates the current penalty of a local government not being able to amend its comprehensive plan to increase residential density if it has not entered into an approved interlocal agreement or adopted comprehensive plan amendments needed to implement school concurrency. The bill also allows DCA to issue a notice to the school board and local government to show cause why sanctions should not be imposed for failing to properly comply with school concurrency requirements, and if DCA finds insufficient cause for failure to comply, DCA may submit a finding to the Administration Commission, which may impose sanctions on the local government and school board.
- The bill allows charter schools to be considered as appropriate mitigation for development, and for purposes of determining whether LOS has been achieved, for the first three years of school concurrency determination, a school district that includes relocatable facilities in its inventory of student stations is required to include the capacity of the relocatable facilities, provided they were purchased after 1998 and they meet the standards for long-term use pursuant to statute.

## Transportation Concurrency

- The bill contains legislative findings that in urban centers transportation cannot be effectively managed solely through the expansion of roadway capacity.
- The bill establishes transportation concurrency exception areas (TCEAs) for locations meeting the following characteristics:
  - a. A municipality that qualifies as a dense urban land area under § 163.3164;
  - b. An urban service area under § 163.3164 that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area under § 163.3164; and
  - c. A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area under § 163.3164, but does not have an urban service area designated in the local comprehensive plan.
- The bill allows a municipality that does not qualify as a dense urban land area pursuant to § 163.3164 to designate as TCEAs in its comprehensive plan:
  - Urban infill areas as defined in § 163.3164;
  - Community redevelopment areas as defined in § 163.340;
  - Downtown revitalization areas as defined in § 163.3164;
  - Urban infill and redevelopment under § 163.2517; or

- Urban service areas as defined in § 163.3164 or areas within a designated urban service boundary under §163.3177(14).
- The bill also allows a county that does not qualify as a dense urban land area pursuant to § 163.3164 to designate as TCEAs in its local comprehensive plan the following:
  - Urban infill areas as defined in § 163.3164;
  - Urban infill and redevelopment areas under § 163.2517;
  - Urban service areas as defined in § 163.3164.
- A local government that has a statutorily designated TCEA or designates one pursuant to the procedures set forth in the bill would be required, within 2 years after the designated area becomes exempt, to adopt into the local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If DCA finds insufficient cause for the failure to adopt transportation and land use strategies to support and fund mobility within the designated exception area after 2 years, they are to submit the finding to the Administration Commission, which may impose sanctions on the local government.
- The bill encourages local governments to adopt complementary land use and transportation strategies that reflect the region’s shared vision for its future.
- The bill contains exceptions to the statutorily-designated TCEAS for:
  - Areas established as transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district; and
  - Any county that has exempted more than 40 percent of the area inside the urban service area from transportation concurrency for the purpose of urban infill.
- The bill also leaves intact the existing provisions of law allowing local governments to designate TCEAs for areas not statutorily designated in the bill, and clarifies that urban infill, urban redevelopment, urban service, or downtown revitalization or areas designated as urban infill and redevelopment areas which pose only special part-time demands on the transportation system are exempt from concurrency requirements for transportation facilities.
- The bill eliminates an existing requirement that a local government establish guidelines in the comprehensive plan for granting exceptions to transportation concurrency, and requires that a local government must both adopt into the comprehensive plan and implement long-term strategies to support and fund mobility within TCEAs, and requires that plan amendments designating TCEAs must be accompanied by data and analysis supporting the determination of the boundaries of the TCEA.
- Current law requires that before designating a TCEA, the local government must consult with the DCA and the Department of Transportation (DOT) regarding the impact of the TCEA on level-of-service (LOS) standards on the Strategic Intermodal System (SIS); the bill would also require a review of the effect on regional transportation facilities identified pursuant to § 186.507, and additional new language would require the local government to provide a plan to mitigate impacts to the SIS, including, if appropriate, access management, parallel reliever roads, transportation demand management, and

other measures, substituting for previous language that established how mitigation would be handled, and challenges to mitigation plans could be filed.

- The bill contains language making it clear that the “designation of a transportation concurrency exception area does not limit a local government’s home rule power to adopt ordinances or impose fees,” and that the language in the bill “does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except as provided in § 380.06(29)(e).”
- The bill modifies § 163.3177(3)(f) and establishes that a local government’s comprehensive plan and plan amendments for land uses within all TCEAs (which are statutorily expanded in the bill- see below) that are designated and maintained in accordance with § 163.3180(5) shall be deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.
- The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the President of the Senate and Speaker of the House by February 1, 2015 regarding the TCEAs created by the bill. The report must address, at a minimum, the methods local governments have used to implement and fund transportation strategies, the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.
- If the Office of Tourism, Trade, and Economic Development (OTTED) concurs in writing with the local government that a proposed development is for a qualified job creation project under §§ 288.0656 or 403.973, after consulting with DOT, the local government may provide a waiver for transportation concurrency with regard to SIS facilities that are not within TCEAs.

#### Impact Fees and Security Camera Standards

- The bill authorizes a county or municipality to decrease, suspend or eliminate an impact fee without waiting the 90 day notice period that applies to a new or increased impact fee.
- The bill creates a new § 163.31802, which prohibits a county, municipality, or other entity of local government from adopting or maintaining standards for security cameras that “require a lawful business to expend funds to enhance the services or functions provided by local government unless specifically provided by general law.” The bill also states that the restriction is not to be construed as limiting “the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras in publicly operated facilities, including standards for private businesses operating within such public facilities pursuant to a lease or other contractual arrangement.”

#### Comprehensive Plan Amendment Process, Procedures, and Other Provisions

- The bill exempts changes to the urban service area from the twice-a-year restriction on plan amendments.
- The bill would require, at the request of an applicant, a local government to simultaneously consider an application for zoning changes required to properly enact a proposed plan amendment transmitted pursuant to § 163.3184(3), and states that zoning

changes approved by the local government are contingent upon the comprehensive plan amendment transmitted becoming effective.

- The bill keeps the alternative state review program in § 163.32465 as a pilot program, but allows jurisdictions to use the process to designate an urban service area.
- The bill requires changes to municipal boundaries through annexation or contraction to be submitted to EDR along with a statement specifying the population census effect and the affected land area.
- The bill modifies § 163.3177(3)(b)1. to move back the requirement that the annual update to the capital improvements element (CIE) of the comprehensive plan comply with the financial feasibility requirement until December 1, 2011, from the existing requirement of December 1, 2008.
- With regard to intergovernmental coordination and dispute resolution, § 163.3177(h)1.c., presently authorizes local governments to include in the intergovernmental coordination element (ICE) a voluntary dispute resolution process. The bill changes that statute to require that the element include the dispute resolution process adopted pursuant to § 186.509 for bringing to closure intergovernmental disputes. The bill also modifies § 186.509, which currently requires voluntary mediation, to require mandatory mediation, or a similar process to resolve disputes.
- The bill also contains a finding that the act fulfills an important state interest.

#### Developments of Regional Impact

- For developments of regional impact (DRIs), the bill requires, during the preapplication procedures, that the LOS required in the transportation methodology is to be the same LOS used to evaluate concurrency in accordance with § 163.3180.
- The bill establishes a DRI exemption for DRIs including a landowner, tenant or other user that has entered into a funding agreement with OTTED under the Innovation Incentive Program and the agreement contemplates a state award of at least \$50 million.
- The bill establishes DRI exemptions (subject to some limitations; *see* below) for the following:
  - a. Any proposed development in a municipality that qualifies as a dense urban land area as defined in the bill;
  - b. Any proposed development within a county that qualifies as a dense urban land area and that is located within an urban service area defined in § 163.3164 which has been adopted into the comprehensive plan; or
  - c. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, which qualifies as a dense urban land area under § 163.3164, but which does not have an urban service area designated in the comprehensive plan.
- If a municipality that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the DRI process:
  - Urban infill as defined in § 163.3164;
  - Community redevelopment areas as defined in § 163.340;
  - Downtown revitalization areas as defined in § 163.3164;
  - Urban infill and redevelopment under § 163.2517; or

- Urban service areas as defined in § 163.3164 or areas within a designated urban service boundary under § 163.3177(14).
- If a county that does not qualify as a dense urban land area designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the DRI process:
  - Urban infill as defined in § 163.3164;
  - Urban infill and redevelopment under § 163.2517; or
  - Urban service areas as defined in § 163.3164.
- A development that is located partially outside an area that is exempt from the DRI program must still undergo DRI review.
- In an area that is exempt under the new criteria in the bill, any previously approved DRI orders shall continue to be effective, but the developer has the option to be governed by § 380.115(1). A pending application for development approval shall be governed by § 380.115(2). A development that has a pending application for a comprehensive plan amendment and that elects not to continue DRI review is exempt from the limitation on plan amendments set forth in § 163.3187(1) for the year following the effective date of the exemption.
- Local governments must submit by mail a development order to DCA for projects that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the newly created exemptions from the program. For those development orders, DCA may appeal the development order pursuant to § 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.
- The bill modifies § 163.3177(h)1.c., which presently authorizes local governments to include in the intergovernmental coordination element (ICE) a voluntary dispute resolution process, to make it mandatory that the element include a dispute resolution process pursuant to § 186.509 for bringing to closure intergovernmental disputes.
- If a local government that qualifies as a dense urban land area is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved.
- The bill contains language that clarifies that the new exemptions do not “limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to this chapter.”
- The new DRI exemptions also do not apply to areas:
  - Within the boundary of any area of critical state concern designated pursuant to § 380.05;
  - Within the boundary of the Wekiva Study Area; or
  - Within 2 miles of the boundary of the Everglades Protection Area as described in § 373.4592(2).

### Mobility Fee Study and Report

- The bill requires the completion by DCA and DOT of their mobility fee studies, and directs that a joint report be submitted to the President of the Senate and the Speaker of

the House of Representatives, no later than December 1, 2009, on the mobility fee methodology study, complete with recommended legislation and a plan to implement the mobility fee as a replacement for the existing local government adopted and implemented transportation concurrency management systems. The final joint report also is required to contain, but is not limited to, an economic analysis of implementation of the mobility fee, activities necessary to implement the fee, and potential costs and benefits at the state and local levels and to the private sector.

### Permit Extensions

- Provides for the extension of certain permits for a period of two years:
  - Permits issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, Florida Statutes, that has an expiration date of September 1, 2008, through January 1, 2012.
  - Any local government-issued development order or building permit. The 2-year extension also applies to build out dates including any build out date extension previously granted under § 380.06(19)(c), Florida Statutes. The extension does not prohibit conversion from the construction phase to the operation phase upon completion of construction.
  - The commencement and completion dates for any required mitigation associated with a phased construction project shall be extended such that mitigation takes place in the same timeframe relative to the phase as originally permitted.
  - The holder of a valid permit or other authorization that is eligible for the 2-year extension is required to notify the authorizing agency in writing no later than December 31, 2009, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.
  - The extensions do not apply to:
    - A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.
    - A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.
    - A permit or other authorization, if an extension would delay or prevent compliance with a court order.
- Permits extended by the bill continue to be governed by rules in effect at the time the permit was issued, except when it can be demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. The same standards apply to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification cannot extend the time limit beyond 2 additional years.

- The bill provides that nothing in the permit extension portion of the bill impairs the authority of a county or municipality to require the owner of a property, that has notified the county or municipality of the owner's intention to receive the extension of time granted by this section, to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

### Affordable Housing

The bill incorporates the provisions of the affordable housing bill (CS/SB 1042) which were amended by the Senate on the last day of the session, and agreed to by the House. Those provisions of the bill:

- Limit the Florida Housing Finance Corporation's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code to the amount of their initial allocation, and provide that after the initial allocation has been provided, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16th of each year. The distribution to the corporation of the unused portion of the state allocation pool is not affected.
- Create § 193.018 to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a community land trust (CLT) and used to provide affordable housing. The bill defines "community land trust" as a nonprofit entity that qualifies as a charitable entity under § 501(c)(3) of the Internal Revenue Code and which has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable housing.
- Codify in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of § 420.0004, or for workforce housing under the income limits of § 420.5095. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.
- Provide that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.
- Amend § 196.196 to create a new subsection (5) to provide that property owned by an exempt organization qualified as charitable under § 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families under § 420.0004. "Affirmative steps" is defined as: environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

- Provide that if property granted an exemption is transferred for purposes other than the provision of affordable housing, or the property is not actually used as affordable housing within 5 years after the exemption is granted, the property appraiser must record a tax lien against the property, and the property owner is subject to taxes otherwise due and owing for failure to use the property for the purpose for which the exemption was granted, and interest at 15 percent per annum with a 50 percent penalty of the taxes due and payable. The 5-year limitation may be extended if the property owner continues to take “affirmative steps” to develop the property for affordable housing.
- Amend § 196.1978 to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in §§ 159.603(7) and 420.0004. The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation. The not-for-profit corporation must qualify as charitable under section 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717. The bill provides that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.
- Amend § 212.055 to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing. The local government or the special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.
- Amend § 163.3202 to provide that certain land development regulations must maintain the existing density of specified properties if the properties are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place to support the use but are not located within a high coastal hazard area under § 163.3178.
- Amend § 420.503 to provide that “moderate rehabilitation” means the repair or restoration of a dwelling unit when the value of such a repair or restoration is not more than 40 percent of the value of the dwelling unit but not less than \$10,000, and allowing loan proceeds to be used for moderate rehabilitation or preservation of affordable housing units.
- Amend § 420.5087 to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the State Apartment Incentive Loan (SAIL) program.
- Create § 420.628 to direct the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system. Such young persons are deemed to have met the definitions for eligible persons for affordable housing

purposes. In addition, students deemed to be eligible occupants under certain federal requirements are also considered eligible for purposes of affordable housing projects.

- Amend § 420.9071 to:
  - Amend the definition of "annual gross income" to provide that "annual gross income" may be defined by the standard practices used in the lending industry as detailed in the local housing assistance plan and approved by the Florida Housing Finance Corporation.
  - Define "assisted housing" and "assisted housing development" as a rental housing development, including rental housing in a mixed use development, which received or currently receives funding from any federal or state housing program.
  - Amend the definition of "eligible housing" to include manufactured housing installed in accordance with the installation standards for mobile and manufactured homes contained in rules of the Department of Highway Safety and Motor Vehicles.
  - Amend the definition of "local housing incentive strategies" to allow the local affordable housing advisory committees to propose local housing incentive strategies in the triennial evaluation of how local governments are implementing affordable housing.
  - Define "preservation" as efforts taken to keep rents in existing assisted housing or assisted housing development affordable for income-qualified persons while ensuring that the property stays in good physical and financial condition for an extended period.
  - Amend the definition of "recaptured funds" to provide that local or grant funds for owner-occupied housing which may be recouped by a county or to city include those funds which were not used to provide assistance and those funds which were part of a defaulted loan or grant award.
- Amend § 420.9072 to delete a cross-reference to § 420.9078, which is being repealed in the bill, and authorize counties and eligible cities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure. The one-time relocation grant, in an amount not to exceed \$5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.
- Amend § 420.9073, relating to Local Housing Distributions, to:
  - Allow the corporation to distribute Local Government Housing Trust Fund dollars on a quarterly or more frequent basis, subject to the availability of funds.
  - Allow the corporation to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to provide additional funding to counties and cities in a state of emergency.
  - Allow the corporation to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to provide funding to counties and cities to purchase properties subject to a SHIP lien on which foreclosure proceedings have been instituted.

- Clarify that counties and cities receiving SHIP funds must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.
- Amend § 420.9075, relating to Local Housing Assistance Plans, to provide that:
  - In the development and implementation of local housing assistance plans used to make affordable housing available to qualified persons, counties and cities must include persons with disabilities as persons with special housing needs.
  - The local housing assistance plans of counties and cities can include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income.
  - Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
  - Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing or assisted housing developments.
  - Not more than 25 percent of funds made available in each county and eligible city may be used for manufactured housing.
  - Monroe County's exemption from income-restrictions relating to the use of set-aside funds in the local government assistance trust fund is extended from July 1, 2008 to July 1, 2013, so that awards may be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.
  - SHIP funds may be used for preconstruction activities. When preconstruction due diligence activities prove that preservation is not feasible, the costs for those activities are program costs and not administrative costs.
  - Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
  - Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.
- Amend § 420.9076 relating to the adoption of affordable housing incentive strategies, to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee. The committee's evaluation of the local housing assistance plan and its report on the evaluation must be submitted to the corporation.
- Repeal § 420.9078 providing statutory requirements for the Florida Housing Finance Corporation's distribution of funds, if any, which remain in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.
- Amend § 1001.43 to expand the purposes for which a district school board in an area of critical state concern may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.

Effective date: Upon becoming a law.

### **HB 0485 - Fast Track Economic Stimulus for Small Businesses**

The bill creates the Florida New Markets Development Program (NMDP) to provide state tax credits for investments in low-income communities. Tax credits allocated may be used to offset corporate income or insurance premium tax liabilities. The program is designed to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by creating a state NMDP similar to the federal program.

The bill provides that there is no credit for the first two years after the original date of investment, and the credit provided in the third year after investment is 7% of the investment amount. The credit provided between the fourth and seventh year after the investment is equal to 8% of the investment amount. Over seven years, this credit totals 39% of the original investment amount. The federal program also provides credits totaling 39% of the investment over a seven year period. Therefore, a company with a qualified investment for both the federal and state program would receive 78% of the purchase price of the investment in tax credits.

An entity could qualify for the state program and not qualify for the federal program. If a taxpayer's state tax liability exceeds their tax credit, then the tax credit may be carried forward for future taxable years, however all tax credits expire December 31, 2022. The tax credits are allocated on a first-come, first-serve basis.

Effective Date: July 1, 2009

### **SB 0494 - Water Conservation**

This bill amends § 373.62 revising the requirements for automatic landscape irrigation systems to include technology that will interrupt or inhibit the system during periods of sufficient moisture. It requires that licensed contractors inspect these systems to ensure that they are in compliance before completing additional work on the systems. The bill also expands the requirements of this section to apply to any person who operates an automatic landscape irrigation system.

This bill also directs the DEP to create a model ordinance by January 15, 2010, for adoption by local governments no later than October 1, 2010. The ordinance shall assess penalties for violations of this section to both operators of non-conforming automatic landscape irrigation systems and licensed contractors who do not comply with this section. It provides for regular maintenance of broken systems without assessing penalties to either operators or licensed contractors when fixed within a reasonable time. It provides that funds raised through penalties be dispersed for water-conservation activities and for administration and enforcement.

The bill provides for variance from day or days-of-the-week watering restrictions (but not time-of-day restrictions) for any residential, commercial, or recreational user within a monitoring entity's jurisdiction having a soil moisture sensor control system if the monitoring entity certifies that:

- 1) Each soil moisture sensor control system installed within its jurisdiction will have multiple soil sensors that conform to different soil types and slopes in order to optimize water use for each user, adjust irrigation schedules based on soil moisture requirements, and be installed by a licensed contractor.
- 2) It has the ability to monitor the status of each individual user's system and to remotely modify the system settings for irrigation cycles and run times.
- 3) It will electronically post and update a list of active users of soil moisture sensor control systems within its jurisdiction on a monthly basis and provide Internet access to such listing and the monitoring database to the water management district and the local government.
- 4) It shall provide notice to a user of noncompliant activity within 48 hours after such activity and, if the user does not take corrective action within 48 hours after such notice, it will remove the posted notice and remove the user from the active users list.
- 5) It shall post a notice at each parcel that has installed a compliant soil moisture sensor control system in plain view from the nearest roadway stating: "Irrigating with Smart Irrigation Controller," with the address of the parcel, and shall remove the notice if the user is no longer being monitored by the monitoring entity.

The bill now provides that a professional engineer or a professional landscape architect must perform an annual maintenance review of all soil moisture sensor control systems within the monitoring entity's jurisdiction and certify to the monitoring entity that systems are properly operating. As amended, the bill does not require individual property owners to install a soil moisture sensor control system.

Effective Date: July 1, 2009

### **HB 0707 - Management of Wastewater**

This bill requires the DEP to investigate wastewater facilities within one mile of an affected beach where a health advisory has been issued to determine if a wastewater treatment facility experienced an incident that may have contributed to the contamination. The bill also requires the Department of Health to notify the municipality or county in which the affected beach is located of the health advisory. Upon completion of its investigation or discovery of an incident at a wastewater treatment facility, the DEP must then notify the municipality or county of the results of the investigation.

A House amendment provides that the DEP may assign its responsibilities and functions to any multicounty independent special district created by the Legislature to include municipal services and improvements to the same extent and under the same conditions.

Effective Date: July 1, 2009

### **SB 0712 - Special Districts / Commodities / Contractual Services**

This bill creates § 189.4221 to authorize special districts to purchase commodities and contractual services using the purchasing agreements of other special districts, counties, and municipalities if:

- The purchasing agreements of other special districts, counties, and municipalities are procured pursuant to competitive bids, requests for proposals, or competitive negotiations;
- The purchasing agreements of other special districts, counties, and municipalities are otherwise in compliance with general law; and
- The purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.

Landscape architectural services, surveying and mapping services, and architectural and engineering services are excluded. With regard to the boundaries of districts, and required reports (§ 189.418 requires that amendments or modifications to the document by which the district was created be filed within 30 days), the boundaries of a district are deemed to include an area that has been annexed for the 4-year period specified in § 171.093(4) or other mutually agreed upon extension, or when a district is providing services pursuant to an interlocal agreement.

Effective Date: July 1, 2009

### **HB 0821 - Community Development Districts**

Community development districts (CDD) are local units of special purpose government that are empowered to exercise limited powers to facilitate the delivery of urban community development services in concert with private developers. They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments for public improvements and community facilities. In 2004, the Legislature passed CS/CS/SB 2984 which established that the only CDDs eligible to use the provisions of § 192.012(4), are those in which the district was already in existence on the effective date of the subsection, and was located within a development that consists of multiple developments of regional impact and a Florida Quality Development. These situations applied uniquely to The Villages and a development called The Meadow in Pasco County.

This bill revises deed restriction enforcement rulemaking authority of boards of directors of CDDs in a manner potentially expanding their powers over property whether within or outside the CDD's geographic limits. Authority over areas outside the CDD's geographic limits is subject to an interlocal agreement or consent of the county or municipality. Deed restrictions

subject to enforcement by CDDs would include both compliance mechanisms and enforcement remedies. The bill also amends § 190.046 revising the procedures to amend CDD boundaries and the procedures to merge CDDs. The bill creates specified procedures for Minor Boundary Amendments, Major Boundary Amendments, and CDD Mergers.

The bill creates a new definition in § 190.003 for "compact, urban, mixed-use district" which means a district located within a municipality and within a community redevelopment area that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units.

The bill also provides that property owners outside the boundary of the district shall elect an advisor to the district board, who has the responsibilities to review enforcement actions proposed outside the district and make recommendations on those proposals. Whenever an interlocal agreement is entered into, a district board advisor seat shall be created for one elected landowner whose property is within the jurisdiction of the government entity but not within the boundaries of the district.

Effective Date: July 1, 2009

## **HB 1021 - Department of Transportation**

The bill is the omnibus transportation bill for the year which addresses many issues related to the Department of Transportation (DOT). In summary, the bill:

- Provides that if a utility facility was initially installed to exclusively serve the DOT, its tenants, or both, the DOT shall bear the costs of removing or relocating that utility facility. However, the DOT is not responsible for bearing the cost of removing or relocating any subsequent additions to that facility for the purpose of serving others. § 337.403(1)(d). If the utility by agreement conveys, subordinates, or relinquishes a compensable property right to the authority to accommodate the acquisition or use of the right-of-way by the authority, and the agreement does not address future responsibility for relocation, the authority shall bear such costs. § 337.403(1)(e).
- Requires better integrates airport planning and adjacent land use in the local government comprehensive planning process. § 163.3177(6)(a).
- Exempts certain seaport-related projects from development-of-regional-impact (DRI) review: Facilities determined by the DCA and applicable local government to be port-related industrial or commercial projects located within 3 miles of or in a port master plan area which rely upon the use of port and intermodal transportation facilities. § 163.3178(3).
- Defines transportation concurrency "backlog" and authorizes authorities to issue bonds with maturity dates no later than 40 years and to exceed the 25 percent tax increment financing rate upon agreement of all affected taxing authorities. § 163.3182.
- Authorizes DOT to award stipends to unsuccessful design-build bidders for state-funded construction and maintenance contracts, and to retain the right to use those designs. § 337.11.
- Requires, before beginning any work under a construction or maintenance contract, that the contractor maintain a copy of the payment and performance bond at its principal place

of business and at the jobsite office, if established, and must provide a copy of the payment and performance bond within 5 days after receiving a written request (instead of recording same in the public records). § 337.18.

- Includes maintenance contractors in the process used by construction contractors to arbitrate contract disputes. § 337.185.
- Authorizes the installation of public pay telephones and accompanying advertising within certain rights-of-way. § 337.408.
- Requires all new or replacement electronic toll collection systems to be interoperable with DOT's electronic toll collection system. § 338.01.
- Provides for variable rate tolling and payment methods on high-occupancy toll lanes or express lanes. DOT may continue to collect tolls after the discharge of any bond indebtedness, and may use any remaining toll revenue for the construction, maintenance, or improvement of any road on the State Highway System. Does not apply to the Turnpike. §338.166.
- Eliminates the requirement to maintain a uniform toll rate structure on the Turnpike system. § 338.231.
- Increases from \$100 million to \$250 million, the maximum dollar amount for projects, which may be added to DOT's work program when funded by other governmental entities. DOT may enter into agreements under this with any county that has a population of 150,000 or fewer for high priority projects. § 339.12.
- Reinstates the Small County Resurfacing Assistance Program in 2012 and removes certain eligibility criteria relating to ad valorem tax rates. § 339.2816.
- Adopts new signage and permit requirements. § 479.07.
- Abolishes the non-functioning Tampa Bay Commuter Transit Authority. § 343.92.
- Requires a study of the I-95 corridor by DOT, the Department of Environmental Protection, The Division of Emergency Management, The Office of Tourism, Trade and Economic Development, the Regional Planning Councils, and the Metropolitan Planning Organizations.
- Adds to the definition of prohibited racing activities. § 316.191.

Effective Date: July 1, 2009

### **SB 1078 – Water Management Districts / Limitation of Liability**

This bill expands the limitation of liability of a water management district (WMD) with respect to areas made available to the public for recreational purposes without charge, to include district lands and water areas. The bill provides that a WMD retains the limitation of liability for certain temporary commercial activities.

The bill provides that the limitation of liability of a WMD applies regardless of whether the person accessing the park area, district lands, or water areas is an invitee, licensee, or trespasser, and regardless of whether the person was engaged in a recreational activity at the time of an accident. The limitation of liability also applies to these areas regardless of whether they were made available to the public at the time of the accident. The bill also specifies that a private landowner who provides an easement to a WMD for purposes of providing access through

private land to lands or water areas that a WMD has made available for recreational purposes, is covered by liability protection.

Effective Date: July 1, 2009

### **HB 1205 - Charter County Transit System Surtax**

The Charter County Transit System Surtax authorizes certain charter counties to levy a maximum one percent sales surtax subject to a referendum. Permitted uses of the revenues include financing the development, construction and operation of fixed guideway rapid transit systems, bus systems, roads and bridges. The charter county may deposit the surtax revenues into a trust fund, remit the revenues to an expressway or transportation authority, or apply them directly to permitted uses. The proceeds also may be distributed by interlocal agreement to municipalities or an expressway or transportation authority.

This bill renames the Charter County *Transit* System Surtax as the “Charter County Transportation System Surtax.” The bill extends eligibility to levy the surtax to 13 additional charter counties by removing an existing provision requiring charter adoption prior to January 1, 1984. Additionally, the bill requires a charter county that has entered into interlocal agreements for distribution of transit system surtax proceeds with one or more of its municipalities to revise these interlocal agreements no less than every five years to include municipalities created since the prior agreements were executed.

Effective Date: July 1, 2009

### **HB 1423 - Relating to Fish and Wildlife Conservation Commission**

This is the omnibus bill for the year which addresses many issues under the jurisdiction of the Fish and Wildlife Conservation Commission. The bill was amended late in the session adding some DEP responsibilities, allowing local law enforcement to share forfeiture proceeds when assisting FWCC, and adding the Florida Coral Reef Protection Act. The bill provides:

- The duty to conserve and improve state-owned lands includes the preservation and regeneration of seagrass, which is deemed essential to the oceans, gulfs, estuaries, and shorelines of the state. A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve - with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves - commits a noncriminal infraction.
- The placement of information markers, by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting and no longer are required to be 50 feet from the normal shoreline.
- Municipalities and counties have the authority to establish the boating-restricted areas by ordinance, such as:
  1. An ordinance establishing an idle speed, no wake area, if the area is:
    - a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility;

- b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility; or
    - c. Inside or within 300 feet of any lock structure.
  - 2. An ordinance establishing a slow speed, minimum wake area if the area is:
    - a. Within 300 feet of any bridge fender system;
    - b. Within 300 feet of any bridge span presenting vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet;
    - c. On a creek, stream, canal, or similar linear waterway if less than 75 feet in width; or
    - d. On a lake or pond of less than 10 acres.
  - 3. An ordinance establishing a vessel-exclusion zone if:
    - a. Designated as a public bathing beach or swim area; or
    - b. Within 300 feet of a dam, spillway, or flood control structure. The commission must review any such ordinance to determine by substantial competent evidence that the ordinance is necessary to protect public safety.
- No county or municipality may enact, continue in effect, or enforce any ordinance or local regulation:
  - 1. Establishing a vessel or associated equipment performance or other safety standard;
  - 2. Relating to the design, manufacture, installation, or use of any marine sanitation device on any vessel;
  - 3. Regulating any vessel upon the Florida Intracoastal Waterway;
  - 4. Discriminating against personal watercraft or airboats;
  - 5. Regulating the anchoring of vessels other than live-aboard vessels outside mooring fields; or
  - 6. Regulating engine or exhaust noise.
- Enforcement of §327.70 may be by municipal police officers (navigation rules, interference with navigation, required lights and shapes, marine sanitation, display of decals and number, livery vessels, etc.).
- The Commission has the power to enforce the Florida Aquatic Weed Control Act.
- Any state, county, or municipal law enforcement agency that enforces or assists the commission in enforcing laws relating to illegally taken wildlife, freshwater fish, and saltwater fish which results in a forfeiture of property is entitled to receive all or a share of such property.
- The Commission, in consultation with the DEP, is directed to establish a pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. A county or municipality selected for participation in the pilot program may regulate by ordinance the anchoring of vessels outside of a mooring field.
- Adds the Florida Coral Reef Protection Act (from SB 1004) which enables the DEP to:

- Recover both compensatory damages and civil penalties for injuries to coral reefs from responsible parties
- Use habitat equivalency analysis as a method to calculate damages; Require the responsible party to notify the department within 24 hours of running aground, and to remove the vessel within 72 hours
- Delegate enforcement authority to other state agencies or coastal counties with coral reefs within their jurisdictions
- Deposit funds recovered for damages to coral reefs into the Ecosystem Management and Restoration Trust Fund to be used for the rehabilitation and preservation of coral reefs; and
- Enter into settlement agreements with third parties to fund coral reef restoration and mitigation from funds paid by responsible parties.

Effective Date: July 1, 2009

### **SB 2080 – Relating to Water Resources**

This bill was initially filed to direct the Southwest Florida Water Management District to implement the West-Central Florida Water Restoration Action Plan (WRAP), the District's regional environmental restoration and water resource sustainability program for the Southern Water Use Caution Area. The WRAP includes the Central West Coast Surface Water Enhancement Initiative with the following components: the Dona Bay-Cow Pen Slough; the Shell Creek Watershed; and the Upper Myakka River-Flatford Swamp. The WRAP also includes the Facilitating Agricultural Resource Management Systems Initiative, the Ridge Lakes Restoration Initiative, the Upper Peace River Watershed Restoration Initiative, and the Central Florida Water Resource Development Initiative.

As one of few vehicles for amendment, it was broadened late in the Session to include the following provisions:

- Basin board members may not serve more than 180 days after the end of their expired terms. The bill eliminates the Oklawaha River Basin Advisory Council within the St. Johns River Water Management District. § 371.0693
- In the first year of the Governor's term, the Governor shall appoint four members to the governing board of the Southwest Florida Water Management District and three members to each of the other governing boards. In the fourth year of the term, the Governor shall appoint three members to the Southwest Florida Water Management District and two members to each of the other governing boards. § 373.073
- District governing boards must delegate to the executive director all of its authority to take final action on permit applications under part II or part IV and petitions for variances or waivers of permitting requirements except for denials of such actions. The executive directors may execute such delegated authority through staff members. Such process shall expressly prohibit any member of a governing board from intervening in any manner during application review. The governing board, a basin board, a committee, or an advisory board may conduct meetings by means of communications media technology. §337.079

- Adds requirements for the licensure of water well contractors including proof of experience and references. § 373.323
- To encourage participation in alternative water supply development by private-rural-land owners with modest near-term water demands but substantially increasing demands after the 20-year planning period, water management districts and the DEP may grant permits for up to 50 years where such landowners make extraordinary contributions of lands or construction funding. A permit for a term of at least 25 years shall be approved for a renewable energy generating facility or the cultivation of agricultural products on lands of 1,000 acres or more for use in the production of renewable energy. § 373.236
- The total annual debt service for district revenue bonds may not exceed 20 percent of the annual ad valorem tax revenues unless approved by the Joint Legislative Budget Commission, which is also authorized to review the financial soundness of a water management district. § 373.584
- Adds the “Florida Friendly Landscaping” bill language. Each water management district may develop its own model or use one in the manual entitled “Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions” to be developed by the DEP. A deed restriction or covenant or local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on their land or create any conflicting requirement. Each water management district must use Florida-friendly landscaping on public property owned by the district where facilities are constructed after June 30, 2009, and must develop a 5-year program for phasing in landscaping for properties on which facilities were constructed prior to that date. These requirements also apply to other state agencies under the purview of the Department of Management Services.

Effective Date: July 1, 2009

### **SB 7031- Economic Development**

This bill amends several sections of Florida Statutes with the intent of fostering economic development. Among other things, the bill:

- Adds alternative and renewable energy to the Innovation Incentive Program in OTTED. For these energy projects, the matching fund requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural areas, brownfield areas, and enterprise zones. The criteria required for an incentive award for alternative and renewable energy were amended with some being added (availability of funds, investment in rural areas, feasibility, new technology, efficiency and long term potential) and some deleted (jobs, use of in-state products). Award agreements must include a wage requirement, reinvestment, internships, reporting, and an amendment process.
- Removes outdated Standard Industrial Classification (SIC) codes from Florida Statute and replaces them with the North American Industry Classification System (NAICS) codes, the federal standard since 1997.
- Extends, from 90 days to 180 days, the number of tax exempt days provided by the decals issued by boat dealers in sales to nonresidents. Extension decals will cost \$425.

- For the Rural Job Tax Credit Program, changes "qualified area" to a county that has a population of fewer than 75,000 persons or any county that has a population of 125,000 (from 100,000) within a Rural Area of Critical Economic Concern (RACEC).
- Creates the economic development incentive application process in §288.061. Enterprise Florida will review the applications, and recommend approval or disapproval to OTTED, which makes the final determination.
- Adds telecommunications facilities, and broadband facilities to eligible projects under the Rural Infrastructure Fund. If an application for funding is for a catalyst site, grants may be awarded for up to 40 percent of the total infrastructure project cost and matching requirement may be waived. A "catalyst site" is a parcel or parcels of land within a rural area of critical economic concern that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations.
- Provides legislative intent for the Rural Economic Development Initiative (REDI) recognizing that rural communities and regions face extraordinary challenges to significantly improve their economies, in terms of personal income, job creation, average wages, and strong tax bases, so the Legislature intends to encourage and facilitate the location and expansion of major economic development projects of significant scale in such rural communities. Provides that each RACEC may designate catalyst projects, provided they are specifically recommended by REDI, identified as a catalyst project by Enterprise Florida, and confirmed by OTTED.
- Amends Brownfield redevelopment bonus refunds to include within eligible businesses the investment of \$500,000 in brownfield areas that do not require site cleanup. Adds to criteria a resolution adopted by the governing board of the county or municipality in which the project will be located recommending that certain types of businesses be approved.
- Amends the Florida Opportunity Fund the ability to invest in businesses and infrastructure projects. Adds that the Fund may not use its original legislative appropriation of \$29.5 million for direct investments, including loans, in businesses or infrastructure projects, or for any purpose not specified in chapter 2007-189, Laws of Florida.

Effective Date: July 1, 2009

### **HB 7053 – Rural Agricultural Industrial Centers**

This bill creates an alternate comprehensive plan amendment process for certain rural agricultural industry centers that may lead to greater economic development opportunities in the communities where they are located. The term "rural agricultural industrial center" is defined as a developed parcel of land in an unincorporated area with an operating agricultural industrial facility that:

- Employs at least 200 full-time employees;
- Is used for processing and preparing for transport farm products or biomass material that could be used for the production of fuel, renewable energy, bioenergy, or alternative fuel;

- May include contiguous land not used for the cultivation of crops but on which activities are conducted that are essential to the operation of the facility; and
- Is located in or within 10 miles of a Rural Area of Critical Economic State Concern (RACEC).

The bill establishes procedures for a landowner to apply for an amendment to the local comprehensive plan to expand the uses or facilities of an agricultural industrial center, and requires the local government to amend its comprehensive plan within 6 months if the application meets the statutory requirements. There is a rebuttable presumption that such an amendment does not promote urban sprawl. The bill does not apply in rural areas with an optional sector plan or in a rural land stewardship area, or to plan amendments associated with an inland port terminal or affiliated port development. The bill also makes it clear that it does not extend any benefits of a designation as a Rural Area of Critical Economic Concern to any lands that are not so designated.

Effective Date: July 1, 2009

### **HB 7157 - Real Property Used for Conservation Purposes**

This bill implements newly-created Section 3(f) of Article VII of the State Constitution (Taxation and Budget Reform Commission, 2008), which provides that:

There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

The bill provides a complete exemption from ad valorem taxes to land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes. A conservation purpose includes retention of the substantial natural value of land, including woodlands, wetlands, water courses, ponds, streams, natural open spaces; and habitat for fish, plants, or wildlife; or for water quality enhancement or water recharge. The bill also provides an exemption equal to 50% of the land's assessed value to land that is dedicated in perpetuity for conservation purposes which is used for "allowed commercial uses." If less than 40 acres, the newly created Acquisition and Restoration Council must make eligibility determinations giving consideration to the following: natural sinkholes; a natural spring serving a water recharge or production function; a unique geological feature; habitat for endangered or threatened species; nursery habitat for marine and estuarine species; protection or restoration of vulnerable coastal areas; natural shoreline habitat; or the retention of natural open space in otherwise densely built-up areas.

Buildings, structures, and other improvements on land receiving the exemption and land area immediately surrounding the buildings, structures, and improvements must be assessed separately unless auxiliary to the use of the land for conservation purposes. Water management

districts with jurisdiction have a third-party right of enforcement for any easement that is not enforceable by a federal or state agency, county, or municipality.

The legal title holder to entitled land must before March 1 of each year, file an application for assessment under this section with the county property appraiser. The failure to file an application constitutes a waiver of assessment for that year, although the owner may subsequently petition the value adjustment board requesting that the assessment be granted. The landowner must also notify the property appraiser promptly if the land becomes ineligible for this assessment. If the property owner fails to notify the property appraiser and it is determined that for any year within the preceding 10 years the land was not eligible for assessment, the owner is subject to taxes avoided as a result of such failure plus 15 percent interest per year, plus a penalty of 50 percent of the taxes avoided.

A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement of an annual application after an initial application is made and the exemption granted. In such case, if the property owner fails to notify the property appraiser that the land is no longer eligible, the owner is subject to taxes avoided as a result of such failure plus 18 percent interest per year, plus a penalty of 100 percent of the taxes avoided.

Beginning in the 2010-2011 fiscal year, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties as a result of implementing this constitutional amendment. On or before November 15 of each year, each fiscally constrained county may apply to the Department of Revenue to participate in the distribution of the appropriation.

Effective Date: Upon becoming a law, and shall apply to property tax assessments made on or after January 1, 2010.

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We will gladly provide you with any additional information or background requested on any issue. Please contact us at your convenience with any questions or comments you may have.

Thank you.