

**28TH ANNUAL ENVIRONMENTAL
PERMITTING CONFERENCE
2014**

**NEW POLICY DIRECTIONS
FOR GROWTH MANAGEMENT**

July 23rd – 2:00-3:40 pm
July 24th – 10:30-12:10 pm

2014 Summer School
GROWTH MANAGEMENT UPDATE

U. New Policy Directions for Growth Management

Legislation over the past 3 years fundamentally changed Florida's growth management process and moved the planning function to the Division of Community Development in the Department of Economic Opportunity. Since that time, government at all levels and lawyers, developers and planners have been adjusting to dramatically changed laws, rules and policies. This timely and informative course will update you of the status of growth management and comprehensive planning implementation at both the state and local levels. Audience participation is encouraged.

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2014 GROWTH MANAGEMENT/ SPECIAL DISTRICTS LEGISLATIVE WRAP-UP

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July 28, 2014

GROWTH MANAGEMENT

Not a lot passed and no major policy shifts. However, among the 264 bills out of 1,989 which passed, with one – count ‘em, one veto – several did have some impact on laws governing development.

Passed:

- **SB 374 (Detert) - Baby Hometown Fix (Round 4):** Corrects the prohibition on local development referenda to allow a local referendum in Long Boat Key. It was required because there was an existing vested charter provision that does not allow any increase in density or intensity without a referendum. This fix was to allow a hotel but it will be handy again. Deleted requirement of five parcels of land. **Passed as Ch. 2014-178, Laws of Florida.**

- **CS/HB 7023 (Hutson) - Economic Development:** Meant as this year’s economic development legislation but also picked up some additional growth management language.
 - Permit extension language that allows an additional two-year extension for development permits which expire between January 1, 2014 and January 1, 2016, but the total amount of the extensions from this and prior legislative extensions are four years. Note that bill includes local permits and development orders and includes for first time certification of LOS. Notice must be given by December 31, 2014.

- The bill also contains language which clarifies that existing DRI's now located in a designated DULA are not subject to the aggregation requirements of Chapter 380 since a new project in that same jurisdiction would be exempt from DRI review in the DULA area.
 - Technical changes to language requiring locals to adopt LDR's within year of comp plan or amendment.
 - Rural Areas of Critical Concern have been renamed to Rural Areas of Opportunity, and bill contains language broadening what funds can be used for.
 - **Passed as Ch. 2014-218, Laws of Florida.**
- **HB 7091- Department of Agriculture and Consumer Services:**
 - Provides for lands classified as agricultural for tax assessment purposes to participate in a dispersed water storage program with DEP or water management district to retain agricultural classification while participating in the program. These will be treated as nonproductive agricultural lands.
 - Allows landowner which misses March 1 date to claim agricultural assessments to provide extenuating circumstances and those circumstances can be accepted by property appraiser.
 - **Passed as Ch. 2014-150, Laws of Florida.**

- **CS/CS HB 489 (Spano) – Mineral Rights:** In response to news of developers retaining mineral rights below residential lots; requires any seller of a lot containing a new home or in which a new home is to be built to provide an affirmative disclosure that the seller or any related entity has or will retain mineral rights below the parcel. **Passed as Ch. 2014-34, Laws of Florida.**
- **SB 356 (Thrasher) – Vacation Rentals:** Modifies Ch. 509 provisions which preempted local government regulation of vacation rentals. That preemption is now limited to not allowing an outright prohibition of vacation rentals, or ordinances on the duration or frequency of a vacation rental. **Passed as Ch. 2014-71, Laws of Florida.**
- **CS/CS HB 1070 (Simpson) - Fuel Terminals:** Defines a fuel terminal and authorizes existing fuel terminals to be reconstructed after a catastrophe to preexisting capacity even if previously classified as non-conforming use. Prospectively, prevents local governments from amendment of comprehensive plan or zoning ordinance to cause fuel terminals to be a non-conforming or unauthorized use on the parcel. **Passed as Ch. 2014-93, Laws of Florida.**
- **Appropriations**

 - Everglades, Indian River Lagoon, \$259.6M;
 - Florida Forever, \$57.5M;

- Sales of non-conservation lands – assumption is \$40M - funds will be used for acquisition of less than fee partnerships, military base encroachment by springs and water resources;
- Lands on the Florida Forever list, \$12.5M;
- Rural Family Lands program, \$5M;
- Springs Protection, \$30M; failed in house but several springs protection projects were funded;
- Recurring funds, \$10M
- Non-recurring funds, \$15M;
- Agricultural Best Management practices funding for DACS, \$5M

Failed Bills:

- **HB 241 (Gaetz) and SB 372 (Galvano) - DRI DULA Expansion:** Would have expanded the list of DULA counties to 7 additional counties and 20 municipalities contained in them. Eliminated adoption of USA as previously directed for DULA's with exception of Miami-Dade. Same with 1000 persons per square mile; goes to 400. Counties to have been added would have been Brevard, Escambia, Lee Manatee, Pasco, Sarasota and Volusia. It would have passed but for issues entirely unrelated to the bill itself. It will likely be back or there will be action to repeal the DRI statute. **Failed.**

- **HB 395 (Perry) and SB 1314 (Evers) - Property Rights Element for Comp Plan:** Would have required governments to adopt a property rights element in the comprehensive plan. It never got a hearing. **Failed.**
- **HB 7065 (Eagle) and SB 1326 (Brandes) - Emergency Management:** Initially contained an exemption for Burt Harris Act claims where a local government was adopting federal flood delineation maps. It was amended to delete that exemption which had been requested by FAC. **Failed.**
- **HB 1077 (Perry) and SB 1310 (Evers) - Property Rights Exactions:** An effort to codify the Nolan, Dolan, Koontz line of cases, specifying that any monetary or property exactions imposed on a development project by local government must have an essential nexus to and be in rough proportionality to the impacts caused by the development. Never heard by any committee but filed late. **Failed.**
- **HB 703 (Patronis) and SB 1464 (Simpson) - Regulatory Reform:** The annual, now-termed-out Jimmy Patronis regulatory reform package. It included several provisions dealing with growth management, for example preventing a local government from imposing a super majority requirement on plan amendments and protecting green belt properties from mandatory down-planning. The Martin County decisions and litigation spurred this on. There was strong resistance but equally important was the fact that it was an election year. The two-year permit extension made it on another bill. **Failed.**

ENVIRONMENTAL

Passed:

- **CS/CS/HB 325 (Stone) – Brownfields:** Clarifies and revises the process for designation of Brownfield redevelopment areas. Clarifies criteria of proposed redevelopment areas outside the designated community redevelopment area, enterprise zone and empowerment zone, closed military base, or designated Brownfield pilot project and it provides expanded immunity from liability to those owning and rehabbing Brownfield sites so long as the original contamination was not caused by that person or entity and so long as the rehab activities do not exacerbate contamination. Local government does not have to use the phrase “Brownfield area” once an area has been designated. **Passed as Ch. 2014-114, Laws of Florida.**
- **HB 7175 (Goodson) - DOT Section 22 Mitigation:** Changes the process of mitigation impacts on transportation projects. Requires FDOT to annually prepare an environmental impact inventory that includes the amount of mitigation needed for any current or proposed future transportation project. Funds for mitigation must be included in work program. It is based on calculating credits based on Uniform Mitigation Assessment Method. Requires DOT to consider using credits from a permitted mitigation bank before projects are identified for inclusion in the WMD mitigation plan. DOT may purchase mitigation credits by purchasing credits at \$75,000 per acre from a mitigation bank through the WMDs

or DEP by conducting its own mitigation or using other options that meet state and local requirements. **Passed as Ch. 2014-223, Laws of Florida.**

SPECIAL DISTRICTS

Passed:

- **SB 846 (Latvala) – Governmental Ethics:** This is the only ethics bill that passed, although a number were filed. I originally thought the language of the bill covered all public officials in terms of completion of 4 hours of annual ethics, public records and open meetings training but in fact, it is only elected municipal officers. The others were already covered.

It also requires the Commission on Ethics to initiate proceedings without first receiving a complaint against the person who has failed or refused to file annual financial disclosure and has accrued the maximum automatic fine. If the Commission initiates a proceeding, it must determine whether the failure to file is willful and, if so, recommend removal from office. It also requires persons who lobby water management districts to annually register with the districts as a lobbyist. And, it authorizes the Ethics Commission to investigate complaints alleging a violation of the registration requirements.

It allows a member of a local government board to abstain from voting if there is a conflict of interest under local standards of conduct that are in addition to or more stringent than the standards in the statutory Code of Ethics and specifies conflict of interest disclosure requirements for those measures.

Finally, it applies certain provisions of the statutory Code of Ethics to the Florida's Clerks of Court Operations Corporation and to the members of Enterprise Florida's Board and Executive Director and senior employees. Similarly, the same requirements apply to the Florida Development Finance Corporation, the Board of Citizen's Property Insurance Corporation.

Requires registration of lobbyists appearing before water management districts. Also requires citizen support and direct support organizations to adopt an ethics code and post conspicuously on websites. Requires ethics trainings for elected municipal officers beginning January 1, 2015. Requires training on public records and public meeting code of ethics. Imposes ethics requirements on expressway authorities. **Passed as Ch. 2014-183, Laws of Florida.**

- **SB 1632 (Stargel) – Special Districts:** This is the omnibus special districts bill. It reorganizes, renumbers and makes numerous technical and conforming changes to special district provisions of Chapter 189, F.S. It outlines a process by which the Joint Legislative Auditing Committee (JLAC) and the Department of Economic Opportunity (DEO) can enforce reporting and other requirements when special districts fall out of compliance with their obligations or become inactive. After notifying DEO, relevant legislators and the local general-purpose government and after a public hearing, JLAC may request the DEO file a petition for enforcement with the circuit court in Leon County. Additionally, the bill:

- Requires all special districts to maintain a website by October 1, 2015 that offers the public specific information (Whole list of documents and contact info);
- Requires special districts to give the website address to the DEO for publication on its website;
- Amends the definition of agency in the Code of Ethics to specifically include special districts;
- Redefines the term special district in Section 189.403;
- Removes provisions concerning special districts application to amend its charter;
- Amends circumstances under which DEO may declare a special district inactive;
- Prohibits inactive districts from collecting taxes, fees and assessments;
- Changes require education for new special district members;
- Revises the provisions concerning the failure to file certain reports;
- Revises administrative fees to be placed in the operating trust fund;
- Requires public hearings concerning certain non-compliance;
- Allows Governor to remove board members for same types of reasons as local government officials;
- Clarifies who has authority for general oversight of districts and process for that; and

- It also provides that any downtown development authority that was established before the effective date of the 1968 Constitution, and has its millage approved by a municipality is an independent special taxing district.

Passed as Ch. No. 2014-22, Laws of Florida.

Failed:

- **HB 351 (Nelson) / SB 510 (Ring):** Creates neighborhood improvement districts to provide authority for a district to exercise powers. Never really had a huge problem with it but it was so loosey goosey numbers didn't know how it could or would affect their districts. **Failed.**
- **SB 772 (Garcia) - Training on Public Records:** Public meetings code of ethics. Imposes ethics requirements on Expressway Authorities – **Failed.**
- **HB 985 (Santiago) / SB 718 (Legg):** These are the awful agenda item bills. They required a notice of public meeting (newspaper) including a description of each matter to be considered and it prohibited a board / commission from acting upon any matter if not included in the notice. It would be published 10 days prior to the hearing. The sole exception was for emergency matters on approval by a super majority. **Failed.**

- **HB 793 (Roberson) / SB 802 (Detert):** This was the CDD bill that provided for dissolution of certain districts by a majority vote of the land owners. Never got hearing. **Failed.**
- **HB 1129 (Caldwell) / SB 1518 (Bradley):** This was the bill to create a Part 2 CDD with very limited powers for conversions from 298 districts. Specifically, Caldwell wanted it to apply to Lehigh Acres. The Governor had vetoed a slightly different bill dealing with Lehigh Acres last year. **Failed.**
- **HB 591 (Rodriguez) / SB 602 (Latvala):** There were also a series of residency bills lead by Latvala which would have applied to local government officials stating criteria that needed to be considered in determining residency. **Failed.**
- **HB 1357 (Nelson) / HB 990 (Ring):** This would have removed the exemption for large portions of the conflict of interest language in Chapter 112 for districts providing infrastructure. Senator Ring was the key proponent, saying he didn't want "shadow governments" doing business with themselves. **Failed.**