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Reply To: Tallahassee

MEMORANDUM

TO: James Angle, Executive Director
Florida Association of Special Districts

FROM: Terry Lewis
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DATE: May 14, 2010

SUBJECT: 2010 Legislative Wrap-Up

The 2010 Regular Session of the Florida Legislature concluded Friday, April 30th after legislators adopted a \$70.4 billion dollar budget. The session ended anti-climatically with very little ceremony and no sign of Governor Charlie Crist. In the waning days it was uncertain if the session would end on time or if the session might be extended in order to spend more time on budget-related issues. With it being an election year, calmer minds prevailed, agreements were sealed and the session concluded around 9 p.m. The Legislature passed what some are calling a record low of three hundred and one bills, joint resolutions and memorials. Obviously, Governor Crist's political announcement dominated the political headlines through most of the final week of the session.

Even before the session ended, rumors spread about Governor Crist's new "independence" and the potential that he would call the Legislature back for a Special Session on the recently-adopted budget and other issues such as energy and oil drilling. At a minimum, many speculate that the Governor will wield his veto pen to strike down legislator's pet projects ("turkeys") and various budget cuts to health care services. In a sign of a more combative relationship with the Governor, legislators sent Governor Crist sixty-three bills on the session's

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final day that he must act on by May 15th. For now, however, session is over...and campaign season begins!

There were a total of 2,521 bills filed, 1,482 in the Senate and 1,039 in the House. Following is a report on legislative issues for the 2010 Session that we monitored, supported or opposed for the Florida Association of Special Districts:

1. Merger/Dissolution Bill (Support)
HB 1095 (Pafford)/SB 1568 (Negron)

These bills clarify that a referendum of district residents shall be required in order to merge or dissolve the special district. The legislation also provides that in the event of a merger, a referendum of residents of the surviving local government entity shall also be required. The bill also specifies that in the event of a merger, the surviving local government entity assumes all of the assets and liabilities of the merged special district. Finally, in the event an independent special district is dissolved, the legislation specifies that the county in which the district is located shall assume all assets and liabilities of the district.

Status: Over the course of the Session, we worked with the Department of Community Affairs to include language in the bills to streamline the process for dissolving an inactive district. We also worked with several fire districts from southwest Florida to incorporate language that would make it easier for districts to voluntarily merge or consolidate. The latter issue raised numerous questions and concerns from staff and it took much work to resolve the issues. The time it took to resolve these issues ultimately doomed the bills as the Session was coming to a close.

When it became apparent that the bills would not make it to the floor, we began looking for other bills on which to amend our language. Unfortunately, there were only two “local government” bills that were viable amendment vehicles, one of which never came to a vote on the floor and the other which was “locked down” to amendments for fear of the bill running out of time and dying.

HB 1095 passed favorably through two committees but died in the House Economic Development and Community Affairs Policy Council. SB 1568 passed through one committee but died in the Senate Ethics and Elections Committee.

2. Election Governing Boards with Authority to Levy Ad Valorem Taxes
HB 493 (Domino)/SB 1180 (Negron)

These bills would place on the ballot for consideration a constitutional amendment to require popular election for members of governing boards that have the authority to levy ad valorem taxes. We understand from speaking with the sponsors of the bills that the legislation is targeted primarily to the five water management districts who have appointed members.

Status: Neither bill received a committee hearing and both died.

3. Property Tax Reform

Additional Homestead Exemption
SB 1254 (Fasano)/HB 655 (Domino)

These bills propose a constitutional amendment that will provide an additional homestead exemption in the amount of 50% of the just value of the property for properties that are established as a homestead within one year of purchase. The exemption is valid for 5 years and is reduced by 20% each year. Further, the bill limits the property to only one of the available homestead exemptions. The bill also reduces maximum annual increase in assessed value for non-homestead property from 10% to 5%.

Status: These bills died.

Taxpayer Bill of Rights (TABOR)
SB 2420 (Haridopolos)

This bill proposes an amendment to the state constitution that would cap all future state and local budgets at the 2010-2011 levels. The bill would also require voter approval of all new or increased taxes and fees.

Status: SB 2420, sponsored by the incoming Senate President, received two committee hearings but died in the Senate Finance and Tax Committee. It never had a House companion. However, given the rank of the Senate sponsor, look for this issue to re-emerge next Session.

Assessment of Real Property with a Declining Just Value
HB 27 (Flores)/HB 39 (Llorente)/SB 718 (Fasano)

These bills would place on the ballot for consideration a constitutional amendment to prohibit an increase in the assessed value of a homestead property if the just value of the property decreases.

Status: These bills died.

4. Sovereign Immunity
SB 2060 (Bennett)

SB 2060 changes the current law on sovereign immunity and increase the waivers from \$100,000/\$200,000 to \$200,000/\$300,000 effective October 1, 2011. The current law waivers of sovereign immunity are \$100,000 for any individual claim or judgment and \$200,000 for claims or judgments arising out of the same incident.

Status: SB 2060 passed and has already been signed into law by the Governor.

5. Local Government Prompt Pay
HB 1157 (Eisnaugle)

HB 1157 amends existing law relating to prompt payment and retainage in contracts between local governments and contractors. Any requirements of a local government relating to a “payment request” or a “proper invoice” must be included in the contract for the project. Current law provides that if an agent must approve a payment request or invoice before the payment request or invoice is submitted to the local governmental, payment is due 25 business days after the date on which the payment request or invoice is stamped as received. The bill provides that a contractor may send a local government an overdue notice after the 25 business days. If the payment request or invoice is not rejected within four business days after delivery of the overdue notice, the payment request or invoice is deemed accepted, except for any portion that is fraudulent or misleading.

A local governmental entity must identify the agent or employee of the local governmental entity, or the facility or office, to which the contractor may submit its payment request or invoice. This requirement is to either be included in the contract or in separate written notice. Any dispute resolution process must be referenced in the contract. The contract for construction services must provide for the development of a single list of items required to render complete, satisfactory and acceptable the construction services purchased by the local governmental entity (often referred to as a “punch” list). The contract must specify the process for developing the list. The contract must specify a date for delivery of the list of items.

The final contract completion date must be at least 30 days after the delivery of the list of items. If the list is not provided to the contractor by the agreed upon date for delivery of the list, the contract time for completion must be extended by the number of days the local government entity exceeded the delivery date. Damages may not be assessed against a contractor for failing to complete a project within the time required by the contract unless the contractor failed to complete the project within the contract period as extended by this provision. Items not included in the list may not affect the final payment of any retainage.

Payment of any undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If a local governmental entity does not commence a dispute resolution procedure within the time required under current law, a contractor may give written notice to the entity of failure to timely commence its dispute resolution procedure. If the entity fails to commence the procedure within four business days after the notice, any amounts resolved in the contractor’s favor are to be paid with interest from the date the payment request or invoice containing the disputed amounts was submitted to the local governmental entity. If dispute resolution is not commenced within four business days, the objection to the payment request or invoice is deemed waived. In an action to recover amounts due under the prompt

payment or retainage laws, the court must award court costs and reasonable attorney's fees, including fees incurred through appeal, to the prevailing party.

Status: HB 1157 passed and awaits action by the Governor.

6. Firefighter Death Benefits
HB 1193 (Plakon)

These bills extend firefighter death benefits to the beneficiaries of firefighters who die in training exercises and those who are intentionally injured and die as a result of the injury. The bill also grants a benefit of continuing insurance to a surviving spouse until he or she remarries.

Status: HB 1193 passed and awaits action by the Governor.

7. Water

Environmental Protection
SB 550 (Constantine)

This is a 150-plus page piece of legislation that relates primarily to water supply and alternative water supply planning and development. The bill also has a variety of tangentially related topics within it. Many of the topics included in SB 550 were stand alone pieces of legislation at one time. Toward the end of the session were all been glommed into one bill. The primary elements of the legislation are:

- a. The bill reorganizes all of the water supply/alternative water supply planning and development provisions that currently are scattered throughout Chapter 373 Florida Statutes. The House and Senate have attempted to reorganize this topic for the past three years and this year, were successful. The actual reorganization itself does not add substance to the law. However, it puts everything in a new Section 7 within Chapter 373.
- b. Water management districts, local governments, utilities and private interests are all encouraged to engage in water supply or alternative water supply planning and development.
- c. The statewide water management districts are designated as the primary planning/water resource development agencies.
- d. Local governments, utilities and private interests are tasked with water supply and alternative water supply development and delivery.
- e. Much of the emphasis within the new section is on alternative water supply development within urban areas that currently suffer or soon will suffer water supply

- shortages. These sections of the law also encourage the creation of regional water supply authorities, with the potential for levying up to .5 mills of ad-valorem tax.
- f. There is an emphasis on top to bottom water supply plans developed and administered by the water management districts.
 - g. There is a funding provision within the bill that directs monies to the state water protection and sustainability program and requires matching water management district appropriations for monies appropriated by the Legislature.
 - h. Utilities regulated by Public Service Commission are entitled to recoup the full costs of developing alternative water supply.
 - i. Mining - The bill contains provisions that authorize limestone mines to receive Environmental Resource Permits (“ERP”). The provisions also authorize issuance by the Department of Environmental Protection or a water management district of “life of mine” permits. There is also a provision in the act that authorizes collection of mitigation fees for mining within the Miami Lake Belt Area. The mitigation fees range from 25 cents to 45 cents per ton with an escalator percentage overtime.
 - j. Everglades Restoration Bonds - The bill adds a \$200 million bond authorization to Chapter 373 for Everglades restoration bonds. New bonds are to be used at a rate of up to \$50 million per year for projects within the Florida Keys area of Critical State Concern for sewage and wastewater. There is also a procedural program for removal of the area of critical state concern designation within the Florida Keys by the Administration Commission tied to the elimination of septic tanks and untreated or semi-treated wastewater.
 - k. Septic Tanks - After January 1, 2016, land application of septage from septic tanks is prohibited in Florida. And, an inspection and repair program for the elimination or upgrading of failing septic tanks systems is included in the bill.
 - l. Wastewater Ocean Outfalls - The new law will require 60 percent reuse of all diverted wastewater flows that are no longer discharged into the Atlantic Ocean.
 - m. Water Management District Governing Board Delegation - Chapter 373 is amended to require a process whereby denials of permits by an Executive Director can be referred to the governing board of a district. No governing board member is authorized to intervene in permanent review by an Executive Director of a district. And, delegations of authority to Water Management District Executive Directors are not subject to Chapter 120 rulemaking.
 - n. Numeric Nutrients Standards - The State of Florida only has qualitative nutrient standards, phosphorous and nitrogen that require biological and chemical balance within a water body. The Environmental Protection Agency (“EPA”) announced

numeric nutrients standards for Florida in January that have been very controversial and in all likelihood cannot be met. The Act in essence scolds the EPA.

- o. Expedited Permitting - There is an expedited permitting provision in the bill for biofuel cultivation on a 1,000 acres of land or more.

Status: SB 550 passed and awaits action by the Governor.

National Pollutant Discharge Elimination System (NPDES) Permits
HB 981 (Grimsley)

In April, 2009, the Court of Appeals for the Sixth Circuit vacated an EPA rule that exempted certain pesticides applied according to label directions per the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) from permitting requirements under the Clean Water Act (CWA). National Cotton Council v. EPA, 553 F.2d 927 (6th Cir. 2009). The court granted EPA a two year stay of the effect of their order to undertake rulemaking. That order is now final inasmuch as the Supreme Court has refused to hear further appeals. Any special district that applies chemicals previously exempt under the FIFRA rules is likely to be eventually affected. The effect will be an obligation to apply for and maintain a CWA NPDES permit for application of the pesticides, fungicides, etc. if they are likely to eventually be discharges to waters of the United States.

HB 981 is a comprehensive bill dealing with agriculture but some provisions of the bill address the NPDES issue. Specifically, the bill provides authority for the Department of Agriculture and Consumer Services (DACS) to oversee the NPDES permits for application of pesticides to state waters. For entities such as water control or mosquito control districts, having DACS oversee the process is much preferred over the Department of Environmental Protection (DEP).

Status: HB 981 passed and awaits action by the Governor who must do so by May 15.

Water Resources
HB 605 (Schultz)

This bill would require upon the request of an independent special district, that water management districts assist in determining whether the facilities or operations of the special district have had any adverse impacts on waters identified as Outstanding Florida Waters. It also provides that the special district may use any available funding source to mitigate any such adverse impacts on such waters.

Status: HB 605 did not receive a committee hearing and never had a Senate companion.

8. Property Assessed Clean Energy (“PACE”)
HB 7179 (Energy and Utilities Policy)

The legislation authorizes cities, counties and special districts to engage in programs of financing clean energy improvements for qualified residential and commercial properties to implement energy improvements and reduction in carbon footprints. The process authorizes local governments to make loans to qualified property owners for energy improvement projects such as weather stripping, solar panels and the like. In return, the property owner must voluntarily sign an agreement authorizing the local government to place an annual non ad-valorem assessment on the benefitted property. The assessment is collected annually for a period of twenty (20) years or less. Under the program, local governments are authorized to issue bonds to finance the program.

Status: HB 7179 passed and awaits action by the Governor.

9. Seaports
HB 963 (Ray)

This legislation essentially creates an expedited conceptual permitting program for ERPs and sovereign submerged land leases for seaports projects within the port planning area for all Florida’s deep water ports designated in Chapter 311 Florida Statutes. The expedited permits constitute State water quality certification under the Clean Water Act and coastal zone management consistency under the Federal Coastal Management Act. The bill also encourages and authorizes public/private partnerships.

Status: HB 963 passed and awaits action by the Governor.

10. Economic Development
SB 1752 (Gaetz)

This 150-plus page bill is primarily aimed at stimulating the economy within economic sectors that would be job creators. The bill includes an appropriation of \$150 million for various grants. It also includes numerous tax exemptions and tax credit opportunities for businesses that create jobs. The target industries appear to be activities such as the space program, movies, and sports franchises. There are however several others that may qualify.

SB 1752 also reauthorizes two year permit extensions for projects that currently have permits. This is essentially a reauthorization of last year’s Senate Bill 360 which granted the original permit extension. In the event Senate Bill 360 is determined unconstitutional in a pending lawsuit the extension in Senate Bill 1752 is intended as a safe harbor.

Provisions have been added to Chapter 288 Florida Statutes which should make it somewhat easier for local governments to receive delegated permit authority from the

Department of Environmental Protection. The legislation also amends Chapter 403 Florida Statutes to extend the deadline for replacement of underground fuel tanks that do not have secondary containment through September 30, 2011.

Status: SB 1752 passed and awaits action by the Governor.

11. Local Government Participation in State Health Insurance
SB 512 (Justice)/HB 929 (Hooper)

Currently, small cities and counties, as well as school districts from small counties, are allowed to participate in the state group health insurance program and the prescription drug coverage program. The local government must pay the premiums for its participating employees. SB 512 would expand the optional coverage to all cities, counties, special districts and school districts.

Status: SB 512 passed through three of its four committee references. However, HB 929 did not receive a hearing. We spoke to the chairman of the first House committee of reference who indicated that he was concerned about the fiscal impact to the State.

12. Local Government Accountability
SB 690 (Dean)/HB 7195 (Military and Local Affairs)

SB 690 makes numerous changes to the budget process and other laws relating to cities, counties, special districts and other governmental entities. The bill revises provisions relating to the preparation or amendment of district budgets, specifies the level of detail for each fund in the budget, and requires budgets to be posted on the district's website (if the district does not have a website, the budget is to be posted on the website of the city or county where the district is located). The bill revises the schedule for submitting a local governmental entity's audit and annual financial reports to the Department of Financial Services. The bill also revises the timeframe for completing a local governmental entity's annual financial audit to be filed with the Auditor General.

We worked with Sen. Dean, the sponsor of SB 690, to ensure that the impact to special districts was minimized while still giving the transparency in the budgeting process for which he was looking.

Status: SB 690 passed the full Senate but died in the House. HB 7195 received only one committee hearing.

13. Public Meetings
SB 138 (Rich)/HB 405 (Kiar)

This legislation allows a local government's risk manager and the division heads of the governmental entity that is involved in pending litigation to meet privately with the local government's attorney to discuss pending litigation provided:

- (a) Reasonable public notice of the date and time of the attorney-client meeting is given; and
- (b) The session commences as an open meeting before the chair of the meeting the commencement and approximate length of the attorney-client meeting and the names of the person attending.

Status: HB 405 received one committee hearing while SB 138 received none. These bills died because of open government concerns.

14. Advertising Requirements and Public Notice
SB 376 (Dean)/HB 1311 (Workman)

SB 376 permits a local government to use its publically accessible website for legally required advertisements and public notices, provided certain requirements are met.

Status: Neither bill received a hearing and both bills died.

15. Senior Services Special Districts
SB 146 (Rich)/HB 153 (Pafford)

These bills authorize counties to create independent special districts by ordinance to provide funding for services to seniors. A referendum is required for a district to levy ad valorem taxes.

Status: These bills died.