

2009 FLORIDA LEGISLATIVE UPDATE AND 2010 FORECAST

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I. ENVIRONMENTAL

A. Bills That Passed.

Conservation Lands (HB 7157)

In 2008, voters ratified a constitutional amendment proposed by the Taxation and Budget Reform Commission which would authorize a real property tax exemption for property held in perpetuity for conservation purposes and a reduction in assessment for property used for conservation purposes. As approved by the Senate, CS/CS/CS/SB 2244 would have made it much easier for property owners to gain a full exemption for property subject to a conservation easement or a reduction in assessment for lands managed for a conservation purpose. Ultimately, HB 7157, the House companion measure with a more conservative approach, was approved by the Legislature. The first part of the bill grants an ad valorem tax exemption to real property subject to a conservation easement held in perpetuity for conservation purposes. Land less than 40 acres in size does not qualify unless the Acquisition and Restoration Council finds the conservation of the property is in the public interest. Income-producing conservation property is only subject to a 50 percent exemption unless all of the income goes toward funding the conservation management plan. Any land qualifying for the federal income tax exemption will also qualify for the state ad valorem tax exemption. The second part of the bill authorizes the property appraiser to take into consideration in its assessment, lands which are used for conservation purposes. Under this approach, lands could be made subject to a 10-year conservation management plan and would qualify for a lesser assessment based on its conservation use. The supporters of this bill believe this will be an important tool in the toolbox for private land conservation for years to come. *The effective date of this bill was June 10, 2009; Chapter No. 2009-157.*

Expedited Permitting (HB 73)

HB 73 requires DEP and the water management districts to adopt programs to expedite the processing of permits for certain economic development projects. The bill also provides shorter timeframes for permit application approval or denial. *The effective date of this bill was July 1, 2009; Chapter No. 2009-134.*

Fish & Wildlife Conservation Commission (CS/CS/HB 1423)

This is a general bill covering a broad variety of agency issues for both the Fish and Wildlife Conservation Commission and the Department of Environmental Protection. Most of the provisions deal with fishing and hunting licenses and game and fish regulation. There is one interesting provision in this bill and a related law that exempts from licensing requirements fishermen who are residents of the state and fishing from the land, provided among other things, they're on food stamps or Medicaid. The other items of interest within the legislation are:

1. Provisions for protecting seagrass beds from damages.
2. The establishment of a pilot program for non-live aboard boat mooring programs; and,
3. Creation of the Florida Coastal Reef Protection Act.

The provisions of the bill providing for enforcement against boaters damaging seagrasses set up a schedule of relatively modest fines for carelessly damaging seagrasses by boating outside of marked channels. A first offense is \$50; a second is \$250, a third \$500 and a fourth \$1,000.

The mooring pilot program is a cooperative venture between the Department of Environmental Protection and the Fish and Wildlife Coordination Commission. The agencies were charged with developing a pilot program to determine alternatives for possibly regulating the mooring of non-live aboard vessels outside of designated mooring fields. A report will be provided to the Legislature on the joint venture.

The Florida Coral Reef Protection Act is a more ambitious project. The Act creates a program for protecting coral reefs from damages by boaters. The Act applies in state waters off Palm Beach County, Broward, Miami-Dade and Monroe counties. If a boater damages a reef and the damage is one square meter or less, the initial offense is \$150. If the damages amount to more than one but less than ten square meters, the penalties are up to \$300 per square meter. Damages in excess of ten square meters have a penalty assessment of \$1,000 per square meter. Each penalty can be trebled if the damage was determined to be aggravated and the damage occurs within a park or aquatic preserve. The maximum fines and penalties that can be levied to someone damaging a coral reef is \$250,000.

All monies collected as a result of reef damage must be paid into the Ecosystems Management and Restoration Trust Fund.

Effective date of this bill was July 1, 2009 except as otherwise provided; Chapter No. 2009-86; See also CS/SB 1742 (Ch. 2009-65).

Florida Forever (SB 2430)

In 2008, the Legislature authorized the extension of the Florida Forever program for \$300 million per year for 10 years and increased the bonding capacity to make that work. The collapse of the real estate market, however, meant significant decreases in documentary stamp tax revenues which fund the program. With insufficient revenue to fund the bonded indebtedness, the Legislature attempted to withdraw the appropriations in the interim budget passed earlier this year. Governor Crist vetoed that provision of the bill, thus leaving intact the earlier appropriations for Florida Forever. Nevertheless, there were still insufficient revenues to fund the program and bonds have still not been issued for fiscal year 2008-09. In the 2009 Session, the Legislature wrestled with these issues again. The Senate supported full funding for Florida Forever, while the House supported no funding. In the end, the Legislature passed CS/CS/CS/SB 2430 which extends the documentary stamp tax to transfers of beneficial interests in real property effectively overruling the Florida Supreme Court in *Crescent Miami Center, LLC v. Florida Department of Revenue* 903 So.2d 913 (Fla. 2005). This expansion of the tax should bring in sufficient revenues to fund the \$300 million in bonds for fiscal year 2009-10. On the other hand, the 2009-10 Appropriations Act does not fund Florida Forever going forward. DEP and the water management districts have numerous option contracts awaiting funding, so once the bonds are issued from fiscal year 2008-09 and those contracts are closed, then the Florida Forever Program will be in a suspension mode. This is the first time since the authorization of Preservation 2000 in 1990 that new revenues have not been appropriated for environmental land acquisition. *Effective date of this bill was June 10, 2009; except as otherwise provided; Chapter No. 2009-131.*

B. Bills That Died.

Contamination Notification (SB 114/HB 1229)

These measures were filed in response to concerns arising out of the Raytheon site in Pinellas County. The bills would have expanded contamination notification requirements for certain discharges discovered during cleanup activities. Although DEP already has revised its notification procedures to address this situation, don't be surprised to see similar legislation filed again in 2010.

Clean/Renewable Energy (CS/CS/CS/SB 1154)

Last year's energy bill (HB 7135) directed the Florida Public Service Commission to adopt a renewable energy portfolio standard (RPS) rule requiring electric utilities to supply a percentage of renewable energy to customers from a portfolio of different sources. However, the legislation forbade the RPS Rule from being implemented until it was submitted to and ratified by the Legislature. Pursuant to that directive, the PSC adopted its RPS Rule and submitted it to the Legislature for consideration and ratification on February 1, 2009. Using the RPS Rule as a catalyst, the Senate passed CS/CS/CS/SB 1154. Among other things, this bill amended the renewable energy policy in the 2008

legislation by requiring electric utilities to supply a percentage of “clean energy” to customers. In other words, the Senate replaced the PSC’s RPS Rule with a clean energy portfolio standard (CPS). The Senate defined “clean energy” to include renewable energy, as well as energy produced from nuclear facilities and integrated gasification combined cycle (IGCC) plants with carbon controls. The House refused to take up CS/CS/CS/SB 1154 or its own measure, HB 7133, and the Governor’s energy package ultimately failed. Look for this issue to be back next session.

Environmental Protection/Land Management/Self Certification (HB 1349/SB 2104)

These omnibus bills initially contained a number of proposals suggested by DEP affecting the agency's powers and duties, primarily relating to land management. The bills would have corrected glitches in last year's re-enactment of the Florida Forever program. They also would have revised penalties for various environmental violations. The House bill became controversial among some (including DEP) when the sponsor, Rep. Jimmy Patronis, amended the bill to provide that, when an application for an ERP is prepared by certain licensed professionals, it is presumed to be in compliance with applicable permitting requirements, and any challengers bear the burden of establishing otherwise. The Senate bill became controversial when Sen. Constantine amended it to include his Springs bill, as well as measures relating to contamination notification and coral reef protection.

Management of State Owned Lands (HB 1355)

CS/CS/HB 1355 would have required Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the state agencies and public entities involved in land management and to determine the most efficient means to restructure the state's land acquisition and management functions. OPPAGA was to report the results of this study to the Legislature by December 1, 2009, presumably in time for the 2010 legislative session. The bill also would have required DEP to issue a request for proposal or invitation to negotiate for a public-private conservation land management demonstration pilot project.

Mangrove Trimming (SB 148)

Senate Bill 148 would have expanded the penalty provisions of the Mangrove Trimming and Protection Act to anyone illegally trimming or responsible for illegal trimming of mangroves. The bill also specified additional criteria for trimming and established a penalty cap of \$10,000 for major violations.

Motor Vehicle Emission Standards (HB 1309/SB 1994)

The comprehensive energy legislation enacted in 2008 authorized DEP to adopt California's motor vehicle emission standards, but provided that they may not take effect until ratified by the Legislature. DEP subsequently approved these in the form of the Florida Clean Car Emission Rule. These bills would have ratified the DEP rule. Although the Florida rule was not approved, shortly after the Regular Session, President Obama announced a national program to regulate motor vehicle greenhouse gas emissions and fuel economy. This subsequent development is expected to end the effort to adopt separate standards in Florida.

Offshore Oil Drilling (CS/CS/CS/HB 1219)

The House did pass an energy-related bill that would have authorized the Florida Cabinet to approve offshore natural gas and oil drilling leases in certain areas of the Gulf. However, the Senate refused to take up this measure and thus the legislation ultimately failed. It is expected that offshore drilling legislation will resurface next session.

Permit Streamlining/Regulatory Reform (HB 7143)

This bill would have made a number of changes to streamline environmental permitting and regulation based on suggestions from governmental agencies and the public. Some of these changes (or some version thereof) were enacted in other bills. For example, the bill would have extended for two years certain permits and approvals issued by DEP, the water management districts, DCA and local governments. It also directed the governing boards of the water management districts to delegate certain duties to the executive director. Some version of these suggested changes were enacted in SB 360 and SB 2080, respectively. Look for some of the other recommended changes to be considered again next year.

Springs Protection (CS/CS/SB 274)

CS/CS/SB 274 would have required DEP to delineate the springsheds of specified springs (including the Wekiva), to adopt spring protection zones and to adopt total maximum daily loads and basin management action plans for spring systems. The bill also would have established stringent requirements for onsite sewage treatment and disposal systems. The bill was quite controversial with many in central Florida, but look for Sen. Constantine to continue to seek passage of this measure.

Stormwater (HB 1145)

HB 1145 would have established a Stormwater Management Study Commission. The Commission would have been comprised of appointees designated by the Board of Landscape Architecture, the Board of Professional Engineers, the Florida Engineering Society, and the Florida Chapter of the American Society of Landscape Architects and the Secretary of the Department of Environmental Protection. The Commission's essential mission would be to review the possibility of establishing a testing and licensing procedure to register professionals who demonstrate competency in stormwater management system design. The Commission was directed to prepare and file its report with the Legislature by November 1, 2009.

Submerged Lands Leases (SB 1012)

SB 1012 would have granted the Trustees of the Internal Improvement Trust Fund additional authority for long-term leases of submerged lands. The lease terms could be granted for periods of time more or less equal to the life of a project or to the length of time during which a particular project might be mortgaged. Additionally, the bill was proposing a substantially enhanced structure for fees to lease sovereign lands. In the end, the fee structure proposed, among other things, sunk the legislation.

Wetlands Permitting/Consolidation and Delegation (HB 1123/SB 2016)

These bills would have directed DEP to seek general permits in an effort to obtain delegation of federal wetlands permitting authority.

II. LAND USE

A. Bills That Passed.

Growth Management (SB 360)

Senate Bill 360, titled the "Community Renewal Act", was approved by the Legislature on the last day of the Session, May 1, 2009. The general theme of the legislation is a relaxation of transportation concurrency requirements within built up, urban areas as an incentive to promote urban infill and discourage sprawl. The law provides the following:

- A. New Definitions – Section 163.3164, Florida Statutes
 - 1. "Urban Service Area" was amended to include built-up urban areas with public facilities including, but not limited to, water and sewer facilities in place or committed for construction within the next 3 years of the capital improvement element schedule of a local government.

2. “Dense Urban Areas” are defined as municipalities with a population density at least 1000 people per square mile and a minimum resident population of 5000 and counties with a population of 1,000,000 or more. Eight counties (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas and Seminole) and 190 cities qualify.

B. Comprehensive Plan Elements – Section 163.3177, Florida Statutes

1. The annual capital improvements element update for a local government need not comply with financial feasibility requirements until December 1, 2011.

C. Concurrency – Section 163.3180, Florida Statutes

1. Transportation Concurrency Exemption Areas (TCEAs) designated by Law:
 - (a) Designated “Dense Urban Areas”.
 - (b) “Urban Service Areas” within comprehensive plans of counties designated as “Dense Urban Areas”.
 - (c) Counties with a population of 900,000 or more and the cities within when the county has no designated “Urban Service Area”.
2. TCEAs That May Be Designated By Cities:
 - (a) Urban infill.
 - (b) Downtown revitalization areas.
 - (c) Urban infill and redevelopment areas.
 - (d) Community redevelopment areas.
 - (e) Urban service areas.
3. Discretionary Designation of TCEAs by Counties that do not qualify for “Dense Urban Area”:
 - (a) Urban infill.
 - (b) Urban infill and redevelopment areas.

- (c) Urban service areas.
 - 4. Requirements for designation of TCEAs:
 - (a) A local government that designates a TCEA must adopt into its comprehensive plan transportation strategies to support and fund alternative transportation modes within 2 years of designation of a TCEA.
 - 5. Designation of a TCEA does not limit a local government's home rule authority or power to adopt ordinances or impose fees.
- D. Impact Fees – Section 163.31801, Florida Statutes
- 1. Local governments do not have to wait 90 days to decrease, suspend or eliminate impact fees.
- E. Security Devices – Section 163.31802, Florida Statutes
- 1. Local governments are prohibited from adopting mandatory ordinances requiring private businesses to install security cameras that require the business to expend funds to enhance the functions or services of the government.
- F. Comprehensive Plan or Amendment Adoption – Section 163.3184, Florida Statutes
- 1. Comprehensive plan amendments for capital improvement element updates, designation of certain TCEAs and developments now exempt from Development of Regional Impact (DRI) review may be adopted more than twice a year.
 - 2. Zoning must occur simultaneously with comprehensive plan amendment approval.
- G. DRIs – Section 380.06, Florida Statutes
- 1. DRI review is eliminated within “Dense Urban Areas” and certain areas designated for urban infill, community redevelopment, and downtown revitalization.
 - 2. Previously approved DRI development orders are still effective.
 - 3. Developments that are greater than 120% of a DRI threshold are still subject to State review and appeal.

4. The Department of Community Affairs and Department of Transportation must submit a mobility fee study to the Legislature by December 1, 2009. The study must consider the feasibility of eliminating transportation concurrency and replacing it with a mobility fee.

The effective date of this bill was June 1, 2009; Chapter 2009-96.

Note: this bill is the subject of a legal challenge filed by a small number of local governments. City of Weston, et al. v. Crist, et al., Case No. 37 2009 CA 002639 (2d Cir., complaint filed July 8, 2009).

Impact Fees (CS/CS/HB 227)

CS/CS/HB 227 requires that, in any action challenging an impact fee, the local government has the burden of proving certain elements by a preponderance of the evidence. The bill also prohibits the court from applying a deferential standard. *The effective date of this bill was July 1, 2009; Chapter No. 2009-49.*

Rural Agricultural Industrial Centers (HB 7053)

House Bill 7053 creates Section 163.3177(15), Florida Statutes. The new law defines “agricultural industrial centers” to be industrial facilities that process or transport agricultural commodities, employ at least 200 personnel and are located within a 10 mile radius of rural area of critical economic concern. An owner of an agricultural industrial center will receive expedited review of an application for a comprehensive plan amendment to authorize compatible industrial uses, provided the new use will create at least 50 jobs and does not exceed 320 acres in size. *The effective date of this bill was July 1, 2009; Chapter 2009-154*

B. Bills That Died.

Century Commission (HB 5015)

This bill would have abolished the Century Commission.

III. WATER RESOURCES

A. Bills That Passed.

Water Conservation SB 494

This lengthy bill dealing with water conservation requires that automatic landscape irrigation systems must be properly installed, maintained and operated. For those systems that include moisture sensing technology which interrupts operation when sufficient moisture is present on landscape, licensed contractors servicing such systems must test for correct operation and repair or replace any malfunctions. The DEP is directed to produce a model ordinance relating to automatic landscape irrigation systems by January 15, 2010 that would be available for adoption by local governments. The ordinance would include provisions directing licensed contractors to report systems that are out of compliance and penalties to property owners for failure to repair them. The legislation also allows for local governments to adopt more stringent ordinances relating to irrigation systems. Funds received from penalties imposed would be available for enforcement and administration of the ordinance. The legislation also seeks to provide incentives to property owners to install moisture sensing irrigation systems by exempting them from lawn watering restrictions imposed by water management districts. A detailed procedure for seeking variances from such restrictions is included in this bill.

In addition to landscape irrigation provisions, SB 494 enacts the Protection of Urban & Residential Environments and Water Act....dealing with Florida Friendly fertilizer application. The legislation finds that such application protects water quality and the environment and directs DACS together with IFAS to develop a model ordinance - based on the results and recommendations of last year's legislatively-established Fertilizer Task Force - for Florida Friendly fertilizer use on urban landscapes. Local governments are encouraged to adopt such an ordinance, and those local governments in which impaired water bodies are located are required to do so, or adopt more stringent standards for fertilizer application. The bill does not apply to farm operations or to local governments that have existing fertilizer ordinances as of January 1, 2009. The Act establishes training and testing programs through DACS and IFAS for certification for urban landscape commercial fertilizer application, including a mandatory certification program. However, it does exempt any yard workers who are applying fertilizer on individual residential properties from such certification requirements. *The effective date of this bill was July 1, 2009; Chapter No. 2009-199.*

Water Management District Liability (CS/CS/SB 1078)

This bill expands the limitations on liability of a water management district for areas made available to the public for recreational purposes without charge. The expanded areas include water management district lands and water areas. The liability protection also extends to a private landowner who provides an easement to the district for providing access to such lands for recreational purposes. *The effective date of this bill was July 1, 2009; Chapter No. 2009-201*

Wastewater Treatment Facilities Investigations (HB 707)

When a local health department issues a health advisory against swimming in beach waters as a result of high pollutant levels, or finds elevated fecal coliform or bacteria in such waters, it is directed to notify the local government in which the affected beach is located as well as the local DEP office. DEP is then directed to investigate all wastewater treatment facilities within one mile of the affected waters to determine if the facilities experienced an incident contributing to the contamination. Results of these investigations must be submitted to the respective local governments. *The effective date of this bill was July 1, 2009; Chapter No. 2009-231.*

Water Resources (SB 2080)

SB 2080 ultimately became the water resources vehicle for the year. The legislation has many different elements. The bill enacts the following provisions:

1. Southwest Florida Water Management District is directed to implement the West Central Florida Water Restoration Action Plan. This action plan is the regional restoration and water resource sustainability program for the Southern Water Use Caution Area within SWFWMD. The general goals of the plan include:
 - a. restoration of Peace River Basin flows;
 - b. restoration of lake levels and water quality within the Lake Belt region of the Lake Wales Ridge within Polk and Highlands Counties; and
 - c. prevention of saltwater intrusion.

The plan consists of a number of initiatives aimed at the specific missions. These include:

- a. The Central West Coast Surface Enhancement Initiative;

- b. The Facilitating Agricultural Resource Systems Initiative (aimed at implementing agricultural best management practices and enhancing agricultural production);
- c. the Ridge Lakes Restoration Initiative;
- d. the Upper Peace River Watershed Restoration Initiative; and
- e. the Central Florida Water Resource Development Initiative (groundwater restoration).

The plan is to be submitted to the President of the Senate and the Speaker of the House prior to the 2010 Legislative Session. If the Legislature does nothing with the plan, it is to be deemed approved.

Additional legislative changes implemented by this bill include:

2. Southwest Florida basin board members can no longer serve longer than 180 days past the expiration of their appointment. Additionally, the terms of Southwest Florida Water Management District Board members are staggered differently than currently.

3. The authority to issue permits by the water management district has now been delegated from the Governing Boards of the water management districts to the Executive Directors unless a permit is proposed to be denied. Individual Governing Board members are prohibited from intervening in the staff review and issuance or denial of a permit.

4. The meetings of all District Governing Boards, Basin Boards and Committees may be conducted by telecommunications.

5. Water well licensing provisions have been strengthened.

6. For entities and individuals engaged in “extraordinary” efforts to develop alternative water supply, permits may be issued for as long as 50 years to various local government entities.

7. For individuals or companies engaged in renewable energy programs related to the production of agricultural products on lands greater than 1,000 acres, permits for water use may be issued for periods of up to 25 years.

8. Legislative review of budgets by appropriations committees and substantive committees is authorized. And, districts may not issue bonds in amounts such that the annual bond service debt is greater than 20% of the district’s ad valorem revenue.

9. The bill also incorporates the Florida Friendly Landscaping Act. The legislation directs the water management districts to create model Florida friendly landscaping ordinances that may be adopted by local governments. The districts are directed to work with nurseries the DEP and county extension agents to promote Florida friendly landscaping using IFAS-related materials.

The effective date of this bill was July 1, 2009. Approved by Governor 06/30/09; Chapter No. 2009-243.

B. Bills That Died.

Water Resources Act Re-Write (HB 1111)

This bill would have "reconfigured" Chapter 373, the Water Resources Act, to create a new section Part VII where all existing provisions in the statute relating to water supply planning and development would have been structured. This is the third year in a row that this effort has been filed and not taken up in any substantial way. Look for this issue to be considered in 2010.

IV. MISCELLANEOUS BILLS OF INTEREST

A. Bills That Passed.

Ad Valorem Assessments (HB 521)

CS/CS/HB 521 changes the burden of proof in ad valorem tax challenges to lessen the burden imposed on taxpayers challenging assessments. The legislation expressly rejects the "every-reasonable-hypothesis" burden previously imposed on taxpayers and instead adopts a preponderance of the evidence standard. *The effective date of this bill was June 4, 2009 and shall first apply to assessments in 2009; Chapter No. 2009-121.*

APA (SB 2188)

SB 2188 makes several changes to the Administrative Procedure Act (APA) based on recommendations from the Joint Administrative Procedures Committee. Among other things, the bill clarifies and simplifies the definition of "agency," in an effort to better describe which entities are subject to the APA. It also requires posting on the agency's web site of notices for public meetings (and available agenda and materials), as well as the statement of agency organization and operations. In addition, the bill revises rulemaking requirements by emphasizing that staff must be available at public hearings, clarifying what materials must be considered and may provide a basis for change, and revising the notice of effective date. *The effective date of this bill is 07/01/2009; Chapter No. 2009-187.*

Campaign Finance/Local Government Expenditures (SB 216)

This bill prohibits a local government from expending, and a person or group from accepting, public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment that is subject to the vote of the electors. It provides an exception for certain electioneering communications and clarifies restrictions with respect to local officials. *The effective date of this bill was July 1, 2009; Chapter 2009-125.*

Property Tax (SB 532)

This bill proposes an amendment to ss. 4 & 6, Art. VII of the State Constitution to limit increases in assessments of real property used for commercial or residential rental purposes to the greater of 5 percent or average annual percentage growth in revenues derived from property over preceding 3 years if ownership of property has not changed. The legislation also grants an additional homestead exemption equal to 25% of the property's just value in the first year of ownership, up to \$100,000, and reduced by 20 percent in each succeeding year to homeowners who have not owned a home for the previous 8 years. *Senate Bill 532 was signed by Officers and filed with Secretary of State on May 29, 2009. It becomes effective if approved by the voters in November 2010.*

B. Bills That Died.

Property Rights (SB 1556)

The bill would have amended the Bert J. Harris, Jr., Private Property Rights Act to provide:

- A. A government moratorium longer than 1 year constitutes an “inordinate burden”.
- B. A landowner must only wait 120 days rather than 180 days after presenting a written claim to a local government to proceed to court.
- C. A government is not applying a law to a specific property by simply enacting the law or regulation.

Working Waterfronts (HB 825/ SB 1468)

Legislation implementing the Working Waterfronts Constitutional Amendment died for lack of agreement between the House and Senate. In 2008, the Taxation and Budget Reform Commission proposed and the voters ratified a constitutional amendment which would require property appraisers to value waterfront real estate on the basis of the use of the land rather than its highest and best use. In other words, a fish house, bait shop, or boat launching facility should be assessed as such rather than its possible highest and best use as a multi-story waterfront condominium. CS/CS/SB 1468 and CS/HB 825 would

have created a process and standards for property appraisers to assess working waterfront for ad valorem purposes. While both Chambers passed their version of the bill, they were unable to reach agreement on the last day of the session. According to the terms of the constitutional amendment, the assessment takes effect on January 1, 2010. Since tax bills for 2010 will not be sent out until later next year, the Legislature still has another year in which to reach agreement.

BROTHER, CAN YOU SPARE AN ISSUE

Each Session of the Florida Legislature seems to come fully equipped with a certain number of Representatives and Senators that passionately attach themselves to issues of awesome unimportance at best. Moreover, many of the legislative proposals filed by these Senators and Representatives attain a life of their own. Fellow travelers eagerly attach themselves to the issue and before you know it, we have a state law authorizing one to be buried with the remains of their beloved pet. That example is a real law, by the way.

In spite of the absolutely horrible economic climate afflicting Florida these days, and the worry all Legislators express over the deteriorating situations with public schools, roads and everything else, the usual amount of time was devoted to these less than gripping political issues. A summary of the bills that were filed (yes, some of them passed), by Legislators this year follows. I supposed it could be the water in Tallahassee which has never been the greatest. An alternative explanation is a sort of legislative delirium or dementia brought on by the recycled air on the 4th Floor of the Capitol Building that is constantly traded back and forth between lobbyists and Legislators during the session. Anyway, here is this year's list:

Dog Bites (SB 372)

There is an actual statute, Chapter 767, Florida Statutes, entitled "Damage By Dog Bites". Moreover, the Senate Community Affairs Committee conducted an interim study to potential revise the statute to specifically identify dangerous dogs and determine whether local governments have adequate power to adopt ordinances to ban various breeds from their jurisdiction. The concept was apparently too tough for legislative staff and legislators to take on with any energy or strength. The bill never got beyond a title, "An Act relating to damage by dogs." Consequently, the bill died without ever receiving a hearing.

Plastinated Bodies (SB 414)

This new law authorizes certain accredited or certified museums to convey plastinated bodies (a kind of mummy) in to and out of the state for exhibition for educational purposes without the consent of the State Anatomical Board, provided the museum notifies the Board at least 30 days before conveyance. If you have seen a "plastinated body", you know that it is a sort of skinless human being so that all of the organs and muscles can be seen. The body comes in a clear plastic so that the view is unobstructed. Will now allow Florida's museum curators to haul these grotesque looking bodies all around the United States, I guess. Once again, Florida leads the way (at least in plastinated bodies transport). *This bill passed and has been signed by the Governor. Chapter 2009-128.*

Illegal Aliens (SB 74)

This is a two-line bill that prohibits any state agency or official from using the term “illegal alien” in an official document. There is no explanation of what they should be named or a definition of what constitutes an illegal alien, if such exists. This bill never received a hearing.

Sexual Barrier Protection Devices (SB 188)

This bill was also filed in 2008 by Senator Wilson. This new improved version authorizes the distribution of sexual barrier protection devices within prisons by not-for-profit organizations. This year, Senator Wilson has added a requirement that the Department of Corrections must develop a disposal plan. If I worked for the Department of Corrections and received that assignment, I think I would understand that my career path was going to be a short one. This bill also died without getting a hearing.

Voting (SB 240)

Senator Bennett’s bill would have authorized a category on each ballot for a candidate that says “I choose not to vote”. While I like the idea, it did not get a hearing. Candidly, it would be enjoyable to show up at an election and make sure that the candidate understood that you thought he or she sucked.

Usury (SB 318)

Florida statutory provisions actually have had the term “shylock” in the law for 100 years or so. The term is used interchangeably with other terms for someone engaged in usurious lending practices. Our Jewish community regarded the term, which comes from Shakespeare, as derogatory. *Chapter No. 2009-22*, Laws of Florida, eliminates the term from Florida Statutes.

Sexual Conduct for Contact with an Animal (SB 448)

This legislation is also on its second trip through the legislative process. The bill is intended to make bestiality a crime in Florida. Last year, the bill prohibited sexual contact with an animal in very general terms and was fairly vague. This year it also prohibits “knowing” sexual conduct or contact with an animal and exempts certain people involved in traditional activities of animal husbandry and veterinarians. The bill is very graphic. Unfortunately, the bill did not pass, leaving one reporter to remark that apparently consorting with beasts of the field is still a legal activity in the State of Florida

Massage Parlors (HB 425)

House Bill 425 is an innocuous clean-up bill relating to the Department of Business and Professional Regulation. However, Representative Burgin filed a nine page amendment regulating massage parlors. A full two pages of the amendment is taken up with description after graphic description of phrases that a massage parlor operator would be prohibited from using in any advertisement. Examples include “double delight”, “girls to go”, “happy endings”, and many, many more. If you don’t blush easily, you may want to read Representative Burgin’s amendment (which was withdrawn) to House Bill 425.

Paintballing Eagles (HB 1065)

Because there are so many bird strikes by aircraft near airports, many airports resort to a variety of activities to try and diminish the bird population in and around runways and along flight paths. The methods used range from setting off strings of firecrackers periodically to installing loud noise facilities to actually firing at birds such as eagles with paintballs. Any of these activities that are included in an airport safety plan can be carried out by airport officials without fear of liability. This bill was passed and has been signed into law, *Chapter No. 2009-167*, Laws of Florida.

Droopy Drawers (SB 1540)

For at least three years now, Senator Siplin has attempted to either pass a bill or amend bills relating to public school property that prohibit the exposure of underwear by teenage boys wearing low slung britches. Once again, he attempted to amend a fairly innocuous public education bill but the amendment failed.

License Plates SB 2326

This is a license plate bill. I know this is poaching on Larry's territory, but it is funny. Senator Lawson, an African American that represents the Tallahassee, Leon County area and typically the voice for state employees, filed an amendment to Senator Ring’s bill creating another license plate. The license plate contains an embossed image of Senator Lawson’s face with the logo over it “Can a brotha get a break?” Senator Lawson stated that his intention was to use the revenues from the sale of the license plate as a state employee’s relief fund to mitigate proposed tax cuts. The trust fund was also going to be used for grief counseling. Eventually the amendment was withdrawn after the Senate initially approved it unanimously.

2010 LEGISLATIVE FORECAST

- *Acquisition of U.S. Sugar Lands by SFWMD
- Beach Access
- Cap and Trade
- *Coastal Management
- Contamination Notification
- *DCA Sunset Review
- Energy/Renewable Portfolio Standard (RPS)
- *FWCC Pilot Program for Mooring Fields
- Growth Management Redux
- *Impact Fees
- *Intergovernmental Disputes as a Result of Elimination of DRI Review
- *Internet Notice
- Landfill Permitting/Siting Restrictions
- License Plates (notwithstanding the 3-year moratorium)
- *Mobility Fee Study
- Nitrogen Reductions Study
- Numeric Nutrient Criteria
- Offshore Oil Drilling
- Permit Streamlining/Regulatory Reform
- *Population Need as a Criteria for Changes for FLUM
- *Recycling Program Development (to achieve 75% goal)
- Situation with Volusia/Deland/etc.
- Springs Protection/Regulation
- Submerged Lands Lease Fees
- *Transportation Concurrency Exception Areas
- Regional Water Supply Plans
- Water Management Districts/Delegation to Executive Directors
- *Water Resources/Chapter 373, F.S. Re-write
- Water Supply Funding/Severance Fee
- Wetlands Permitting/Delegation from ACOE
- Working Waterfronts

*2009/2010 Senate Interim Work Plan

Proposed Constitutional Amendments 2010

These Proposals Have Made The Ballot for November 2010:

Amendment 1: Repeal of public financing requirement

Amendment 2: Tax break for deployed military personnel

Amendment 3: Property tax limit for non-homestead property; added exemption for new homestead owners

Amendment 4: Florida Hometown Democracy

REFERENCES AND SOURCES

Links to bills:

<http://www.flsenate.gov>

<http://www.myfloridahouse.gov>

Florida House of Representatives 2009 Legislative Session End of Session Report:

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Session&CommitteeId=&Session=2009&DocumentType=End%20of%20Session%20Summaries&FileName=2009%20End%20of%20Session%20Summary.pdf>

Florida Senate 2009 Regular Session Summary of Legislation Passed:

http://www.flsenate.gov/cgi-bin/View_Page.pl?File=index.html&Directory=Publications/2009/Senate/reports/summaries/&Tab=committees&Submenu=2

Link to Governor's 2009 Legislative Actions, including signing letters and veto messages:

http://www.flgov.com/2009_legislative_actions

Portions of this article are taken from materials prepared by the authors and others: *Florida Environmental Water Policy and the 2009 Legislature* (July 2009) by Eric Draper, Terry Lewis, Larry Sellers, and Cathy Vogel, and the *2009 Florida Legislative Recap* (May 2009) prepared by Holland & Knight LLP.