



# 2019 Legislative Session Update

**ADVANCED TOPICS SEMINAR 2019**  
**May 31, 2019**

*Larry Sellers, Partner, Holland & Knight LLP*



# Big Picture

- ▶ New Leadership
  - ▶ Senate President Bill Galvano
  - ▶ House Speaker Jose Oliva
  - ▶ Governor Ron DeSantis
- ▶ The Numbers
  - ▶ 3,571 Bills Filed
  - ▶ 194 Bills Passed



# **BILLS OF INTEREST TO ADMINISTRATIVE LAWYERS THAT PASSED**



## CS/HB 21—Hospital Licensure

- ▶ The bill amends various provisions related to the requirement that a hospital must obtain a certificate of need (CON).
- ▶ Among other things, the bill eliminates the requirement to obtain a CON prior to establishing a general acute care or long-term acute care hospital.
- ▶ The bill also eliminates the requirement that a hospital must obtain a CON prior to offering a new tertiary service.

# CS/HB 21—Hospital Licensure



Tertiary services include: pediatric cardiac catheterization; pediatric open-heart surgery; organ transplantation; neonatal intensive care units; comprehensive rehabilitation; medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service; heart, kidney, liver, bone marrow, lung transplantation, pancreas and islet cells, and heart/lung transplantation; adult open heart surgery; and neonatal and pediatric cardiac and vascular surgery.

# CS/HB 21—Hospital Licensure

- ▶ AHCA may continue to use the CON rules for the regulation of tertiary services until such time as AHCA adopts licensure rules for such services.
- ▶ OPPAGA is required to study federal requirements and other state requirements for tertiary services and report to the Legislature by November 1, 2019. The report must include best practices for licensure requirements for tertiary services, including volume requirements.

# CS/HB 21—Hospital Licensure

- ▶ Effective July 1, 2021, the bill eliminates the requirement to obtain a CON prior to establishing a new Class II, III, or IV hospital.
- ▶ If approved by the Governor, the bill's provisions take effect July 1, 2019, except as otherwise provided.



# CS/CS/SB 1020—State Hemp Program

- ▶ Authorizes the DACS to create a state industrial hemp program to administer and oversee the cultivation of hemp.
- ▶ Authorizes the distribution and retail sale of hemp extract, and defines it as a substance or compound intended for ingestion that is derived from hemp, and does not have a THC concentration exceeding 0.3 percent on a dry weight basis.
- ▶ Provides labeling requirements.
- ▶ If approved by the Governor, these provisions take effect July 1, 2019.

# CS/SB 7068—Bid Protest Settlements

- ▶ The transportation bill also provides requirements relating to payments by FDOT of \$1 million or more to a non-selected responsive bidder through a settlement agreement. The bill requires FDOT, when it determines that it is in the best interest of the public to resolve a bid protest of the award of certain contracts through a settlement agreement requiring such payment, to:

## CS/SB 7068—Bid Protest Settlements

- ▶ Document in the FDOT secretary's written memorandum the specific reasons that such settlement and payment is in the best interest of the state; and
- ▶ Provide a written notice that settlement discussions have begun in earnest and a written notice at least five business days, or as soon thereafter as practicable, before the FDOT makes the agreement final.

## CS/SB 7068—Bid Protest Settlements

- ▶ The bill also prohibits the FDOT from pledging any current or future action by another branch of state government as a condition of any procurement action.
- ▶ If approved by the Governor, these provisions take effect July 1, 2019.



# **BILLS OF INTEREST TO ADMINISTRATIVE LAWYERS THAT FAILED**

# SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- The Joint Administrative Procedures Committee developed a number of recommendations for changes to the APA to increase transparency in rulemaking, provide a mechanism to ensure that agencies reduce unnecessary rules, and ensure that rulemaking costs are considered for every rule. Among other things, the bill:
- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines substantive changes to update a rule are not required, the agency must repromulgate the rule.



# SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- Requires an agency to prepare a statement of estimated regulatory costs (SERC) for the adoption or amendment of any rule, other than an emergency rule, and specifies the economic impacts and compliance costs an agency must consider in creating a SERC. Each agency is required to have a website where all of its SERCs may be viewed in their entirety.
- Authorizes agencies to hold workshops for the purposes of gathering information to aid in the preparation of the SERC.



# SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- Requires the annual regulatory plan to identify and describe each rule, by rule number or proposed rule number, which the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1.
- Describes what constitutes an adverse impact on small business.



# SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- Provides that a lower cost regulatory alternative (LCRA) may be submitted after a notice of proposed rule or a notice of change.
- Defines the term “technical change” and requires technical changes to be documented in the history of the rule.



## SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- Requires a period of least 7 days between the publication of a notice of rule development and a notice of proposed rule.
- Requires JAPC to review all existing rules.
- Provides that if JAPC objects to a proposed rule, it may not take effect until ratified by the Legislature.



## SB 1670/HB 7063—Administrative Procedures JAPC Recommendations

- HB 7063 was approved by the House Oversight, Transparency & Public Management Subcommittee. SB 1670 was never heard in Committee.
- Look for these issues to be considered again in 2020.



# BILLS OF INTEREST TO ENVIRONMENTAL AND LAND USE LAWYERS

*SPECIAL THANKS TO JANET BOWMAN*



# Environmental Bills Passed



# SB 2500—Appropriations Act

- Only bill Legislature must pass.
- Total Budget of \$91.1 billion; up from \$88.7 million in 2018-2019.
- Environmental Budget includes \$686.8 million for Everglades and Water Quality Spending.
- \$360 million for Everglades Restoration including the Central Everglades Restoration Project (CERP) and the EAA Reservoir.



# SB 2500—Appropriations Act

- \$50 million for Springs Protection and authority to spend the 2018 springs appropriation of an additional \$50 million.
- \$33 million for Florida Forever.
- \$50 million for Beach Restoration
- \$5.5 million for Florida Resilient Coastline Initiative

# CS/HB 325—Coastal Management

- ▶ Revises the criteria FDEP uses to determine funding priorities for beach restoration and inlet management.
- ▶ Requires that funding for specific projects on annual project lists approved by the Legislature must remain available for 18 months.
- ▶ Allows FDEP to pay from legislative appropriations up to 75 percent of the construction costs of an initial major inlet management project component for the purpose of mitigation erosion caused by inlet.

# CS/HB 325—Coastal Management

- ▶ Effective July 1, 2020, modifies requirements for the preparation of a comprehensive long-term beach management plan that must include a strategic beach management plan, a critically eroded beaches report, and a statewide long-range budget plan.
- ▶ If approved by the Governor, the effective date of the bill is July 1, 2019.



# SB 1552—Florida Red Tide Mitigation & Technology Development Initiative

- ▶ Establishes the Florida Red Tide Mitigation and Technology Development Initiative as a partnership between the FWCC's Fish and Wildlife Research Institute and Mote Marine Laboratory.
- ▶ Appropriates \$3 million beginning in the 2019-2020 fiscal year and continuing through the 2024-2025 fiscal year to the FWCC for the purpose of implementing the bill.
- ▶ If approved by the Governor, the bill takes effect July 1, 2019.



# CS/CS/HB 95

## C-51 Reservoir Project

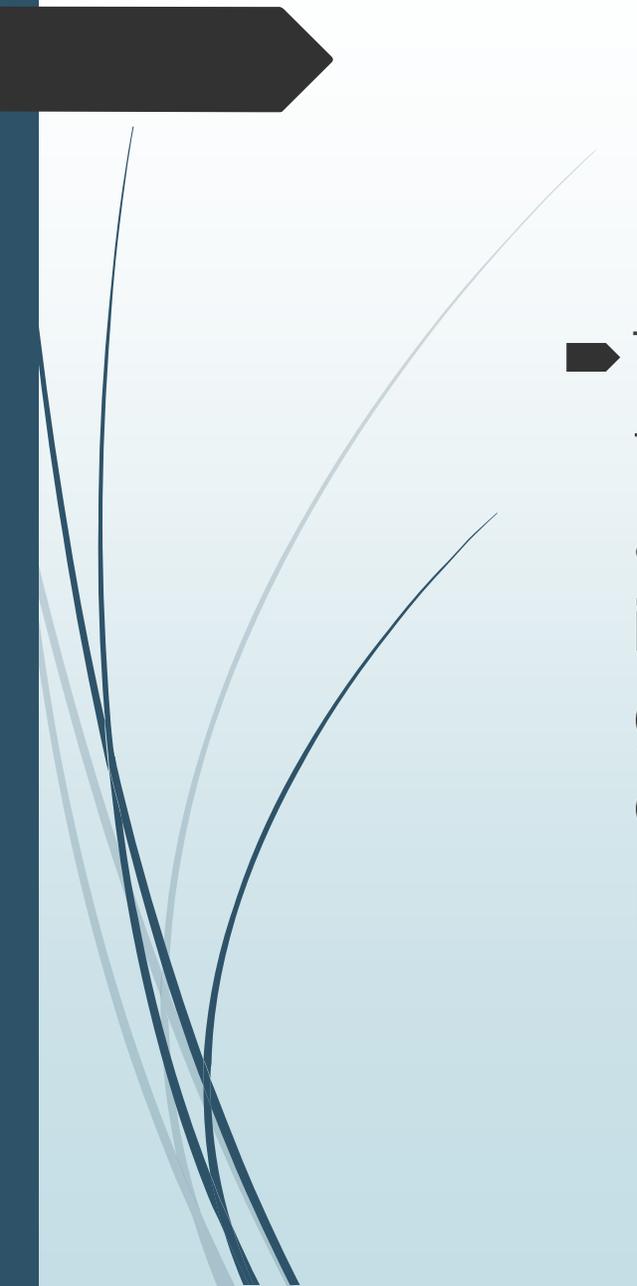
- Project to reduce harmful discharges to surface waters and to provide water for utilities.
- Authorizes SFWMD to negotiate with the owners of the C-51 reservoir project site for the acquisition of any portion of the project not already committed to utilities for alternative water supply purposes.
- The operation of Phase I of the C-51 reservoir project must follow any operation or maintenance approved by the district.



# CS/CS/HB 95

## C-51 Reservoir Project

- ▶ Water received from Lake Okeechobee into the reservoir may be used to support consumptive permits only if the consumptive use complies with SFWMD rules.
- ▶ If approved by the Governor, the bill takes effect on July 1, 2019.

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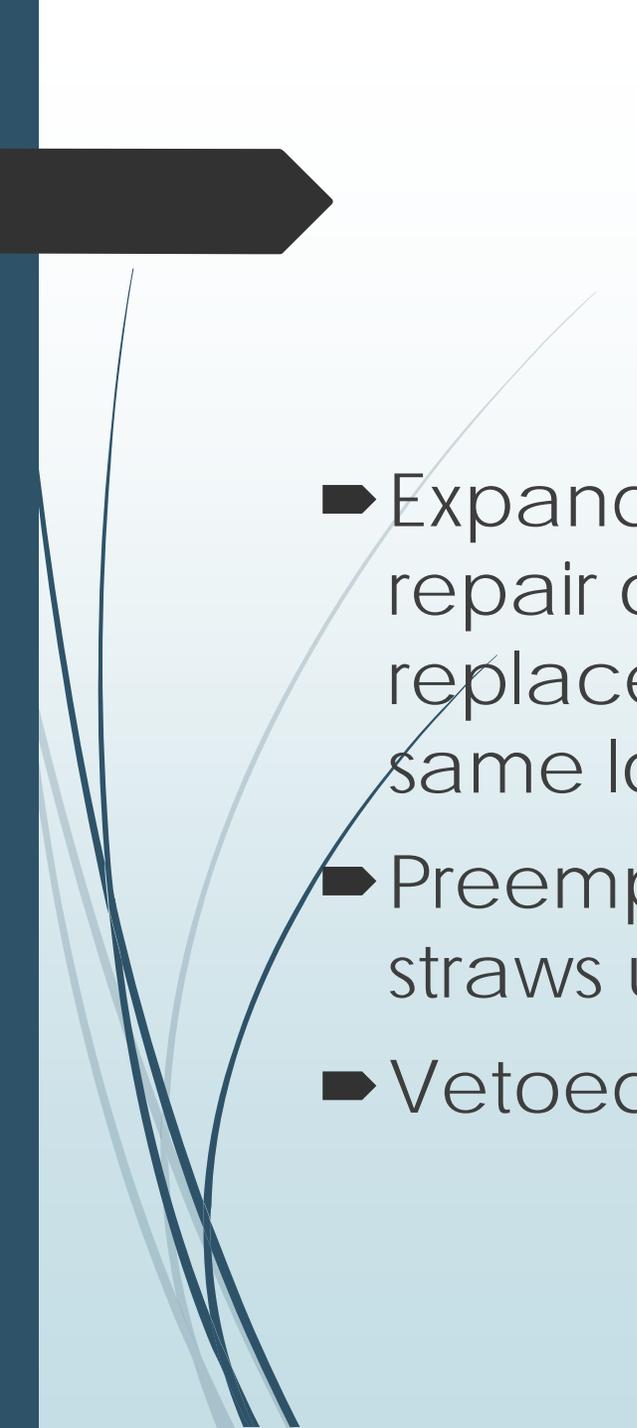
## SR 1820—Moratorium on Drilling in the Gulf of Mexico

- ▶ The Senate supports an indefinite extension of the current restriction on oil and gas leasing in all areas east of the Military Mission Line and an indefinite extension of the current ban on oil and gas leasing within 125 miles of the Florida coastline in the Eastern Planning Area and in a portion of the Central Planning Area.



# CS/CS/HB 771—Environmental Regulation VETOED

- Requires counties and municipalities to address the contamination of recyclable material in contracts for residential recycling collection and processing.
- Provides that a recovered materials processing facility is not required to process contaminated recyclable material except as provided for in its contract with a county or municipality.



## CS/CS/HB 771—Environmental Regulation VETOED

- ▶ Expands the permit exception for the replacement or repair of existing docks or piers to allow the replacement dock or pier to be within 5 feet of the same location and no larger than the original structure.
- ▶ Preempts local government bans on single-use plastic straws until July 1, 2024.
- ▶ Vetoed by Governor on May 10, 2019.



# Growth Management/Land Use Legislation Passed



# CS/CS/HB 7103—Community Development & Housing

- Requires that inclusionary housing ordinances enacted by local government must provide incentives to fully offset all costs to the development of its affordable housing contribution—e.g., density bonuses.
- Requires local governments to review development order applications for completeness within 30 days, providing the applicants with 30 days to address deficiencies and approving or denying the application within 120 days (for complete applications) or 180 (for applications that require final action through a quasi-judicial hearing).



# CS/CS/HB 7103—Community Development & Housing

- The processing timelines do not apply in an area of critical state concern.
- Prohibits a local government from charging fees (other than a reasonable administrative fee) for building inspections if the fee owner or contractor hires a private provider.
- Reduces the number of business days from 30 to 20, after receipt of a permit application and affidavit from a private inspector for a local building official to issue a permit

# CS/CS/HB 7103—Vesting Densities

- Creates provisions for vesting densities contained in development orders. When a new municipality adopts a comprehensive plan after January 1, 2019, all land development regulations adopted to implement the plan must incorporate each development order existing before the plan's effective date and must vest the density and intensity approved by the development order.



# CS/CS/HB 7103—Summary Proceedings and Attorney's Fees

- ▶ In proceedings to enforce the consistency of development orders with local government comprehensive plans, either party is entitled to the summary procedure of s. 51.011, F.S.
- ▶ Upon a showing by clear and convincing evidence that summary proceeding is not appropriate, the court may determine that the summary procedure does not apply.



# CS/CS/HB 7103—Summary Proceedings and Attorney's Fees

- The prevailing party in a consistency challenge to a development order is entitled to recover attorney's fees and costs in challenging or defending the order, including reasonable appellate attorney fees and costs.
- Controversial with planning and environmental interest groups.



# CS/CS/HB 7103—Workforce Housing

- Expresses the need for a state strategy to provide affordable workforce housing in areas of critical state concern.
- Creates a definition of “essential services personnel” for the purpose of workforce housing.



## CS/CS/HB 7103—Limits Extension of Permits to “Natural” Emergencies

- ▶ Revises s. 252.363 to provide that only the declaration of a state of emergency by the Governor for a “natural” emergency tolls and extends the time remaining on certain development orders, building permits, environmental resource permits and buildout dates of DRIs.
- ▶ Hurricanes – yes; Opioid Crisis – probably not.



# CS/CS/HB 7103—Impact Fee Provisions

- Prohibits the collection of impact fees by local governments prior to the date of issuance of the building permit for the property subject to the fee.
- Codifies provisions of dual rational nexus test—impact fees must be proportional to: (1) the need for additional capital facilities and the increased impact generated by new construction, and (2) the expenditure of funds collected and the benefits accruing to the new construction.

# CS/CS/HB 7103—Impact Fee Provisions

- Revenues generated from impact fees cannot be used to pay existing debt for previously approved projects.
- Local government must credit against the collection of an impact fee, contributions of lands or construction that must be credited on a dollar for dollar basis at fair market value and the government has the burden of proving that the imposition of the fee meets statutory requirements.

# CS/CS/HB 7103—Impact Fee Provisions

- ▶ A local government may provide an exception or waiver for affordable housing.
- ▶ Impact fee provisions do not apply to water and sewer connection fees.
- ▶ If approved by the Governor, the bill becomes effective upon becoming law.



# CS/HB 207—Impact Fees

- ▶ Prohibits a local government from requiring the payment of an impact fee before the date of issuance of the building permit for the property that is subject to the fee.
- ▶ Codifies the dual rational nexus text.



## CS/SB 7068—Multi-Use Corridors

- Creates the Multi-use Corridors of Regional Economic Significance Program within the Florida Department of Transportation to advance the construction of regional transportation corridors that are intended to accommodate multiple modes of transportation and multiple types of infrastructure.
- Identifies three corridors for the construction of toll roads:



## CS/SB 7068—Multi-Use Corridors

- a. Southwest-Central Florida Connector, extending from Collier County to Polk County
- b. Suncoast Connector, extending from Citrus County to Jefferson County.
- c. Northern Connector, extending from the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway.



**SUNCOAST PARKWAY EXTENSION**

**FLORIDA TURNPIKE EXTENSION**

**POLK-COLLIER CORRIDOR**

# CS/SB 7068—Multi-Use Corridors

- For each of the three toll road corridors, FDOT shall convene a corridor task force composed of listed stakeholders by August 1, 2019.
- Each task force shall hold a public meeting in each local government in which a project within an identified corridor is being considered
- Each task force shall evaluate the need for, and economic and environmental impacts, hurricane evacuation impacts and land use impacts of the respective corridor and submit a final report to the Governor, Senate President and Speaker of the House by October 1, 2020.



# CS/SB 7068—Multiuse Corridors

- ▶ Not later than December 31, 2023, a local government that has an interchange planned for its jurisdiction shall review the task force report and the local government comprehensive plan to determine whether the area in and around the interchange contains appropriate land uses and natural resource protections.
- ▶ To the greatest extent practical, corridor alignments are to avoid conservation lands acquired under the Florida Preservation 2000 Act and the Florida Forever Program.



## CS/SB 7068—Multiuse Corridors

- Construction of the corridors is intended to begin no later than December 31, 2022 and the corridors open to traffic no later than December 31, 2030.
- Portions of motor vehicle license taxes currently deposited in the general revenue fund are diverted to the State Transportation Trust Fund to be used for corridor project funding.



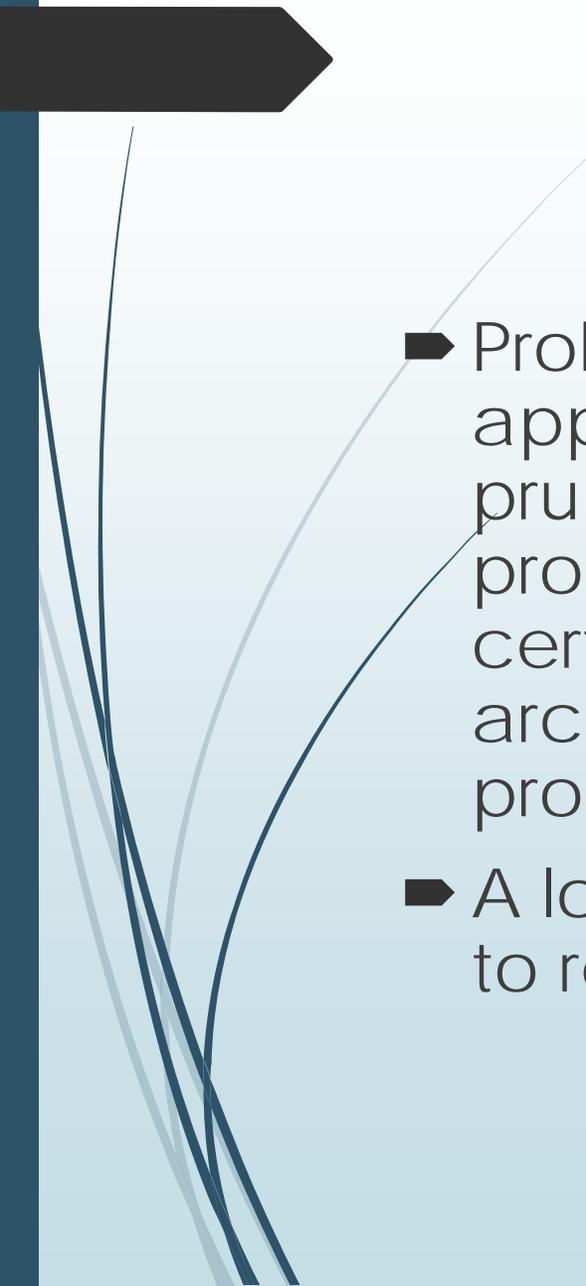
## CS/SB 7068—Multiuse Corridors

- ▶ 2019-2020--\$45 million is diverted to the State Transportation Trust Fund;
- ▶ 2020-2021--\$90 million is redirected to the State Transportation Trust Fund
- ▶ 2021-2022 and thereafter, \$132.5 million is redirected to the State Transportation Trust Fund.
- ▶ The Governor signed the bill on May 17, 2019, and it takes effect on July 1, 2019. Chapter 2019-43, Laws of Florida



## HB 6017—Small-Scale Comprehensive Plan Amendments

- Removes the cumulative acreage cap of 120 total acres on small scale amendments to local comprehensive plans.
- Does not change the 10-acre cap on each small scale amendment.
- If approved by the Governor, the act takes effect on July 1, 2019.

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## HB 1159—Private Property Rights/Trees on Private Property

- Prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning or removal of a tree on residential property if the property owner has obtained documentation from a certified arborist or a Florida licensed landscape architect that the tree presents a danger to persons or property.
- A local government may not require the property owner to replace a tree removed pursuant to the bill.



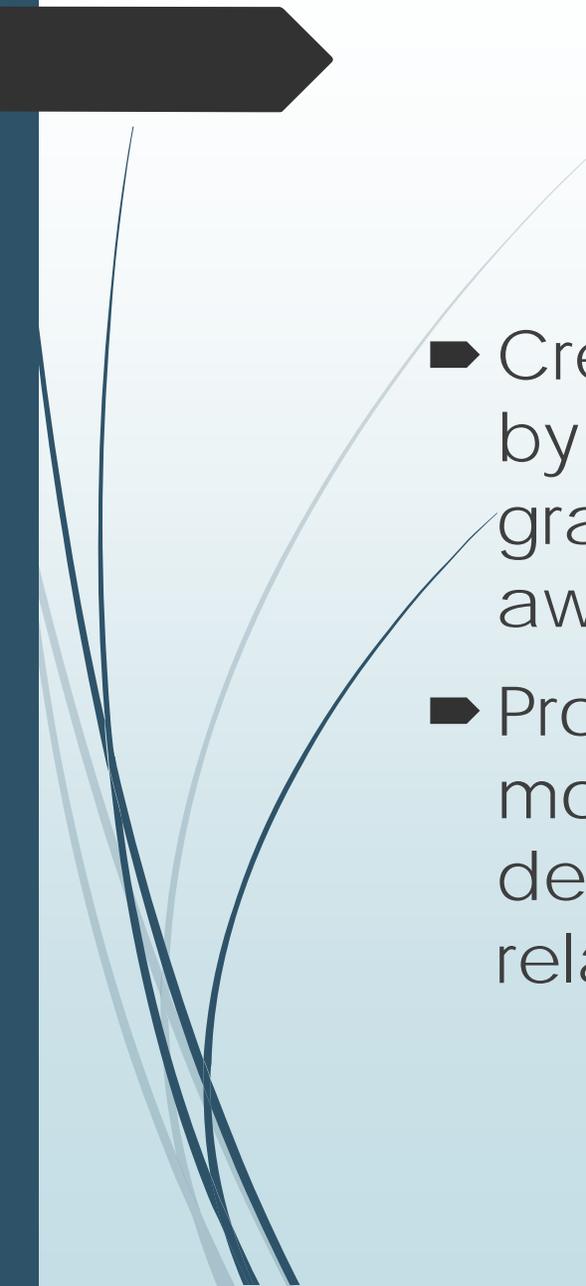
# HB 1159—Private Property Rights/Trees on Private Property

- Requires each property appraiser office to post on its website a Property Owner Bill of Rights, the language of which is listed in the bill.
- If approved by the Governor, the bill takes effect July 1, 2019.



# CS/CS/CS/SB 1000—Communication Services

- ▶ The bill makes extensive changes to the law governing the use of public rights-of-way by providers of communication services. Among other things, the bill:
- ▶ Prohibits a local government from imposing permit fees for the use of public rights-of-way by communication services providers if it had not levied permit fees as of January 1, 2019.

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## CS/CS/CS/SB 1000—Communication Services

- Creates a civil cause of action for any person aggrieved by a violation of the right-of-way statute. The court may grant temporary or permanent injunction and may award attorney fees to the prevailing party.
- Prohibits a local government from instituting a moratorium or other mechanism that would prohibit or delay permits for collocation of small wireless facilities or related poles



# CS/CS/CS/SB 1000—Communication Services

- ▶ Deletes the authority for a local government to require performance bonds and security funds and allows it to instead require a construction bond limited to no more than 18 months after the construction is completed.
- ▶ If approved by the Governor, the bill takes effect on July 1, 2019.
- ▶ Note: Florida League of Cities and 3 cities recently filed legal challenge to 2017 Small Cell statute.



# CS/SB 82—Vegetable Gardens

- Preempts local governments from regulating vegetable gardens on residential property.
- Defines a vegetable garden.
- Alert readers will note that this measure was prompted by the ruling in *Ricketts and Carroll v. Village of Miami Shores*.
- If approved by the Governor, the act takes effect on July 1, 2019

# CS/CS/CS/HB 829—Attorney's Fees & Costs

- ▶ Provides that if a civil action is filed on or after July 1, 2019, against a local government to challenge the adoption or enforcement of an ordinance on the grounds the subject is preempted by the State Constitution or state law, the court shall award reasonable attorney's fees, costs and damages to the prevailing party.
- ▶ Provides Safe Harbor: Attorneys fees and costs may not be awarded if the local government receives written notice that the ordinance is expressly preempted and the local government withdraws the proposed ordinance within 30 days or issues a notice of intent to repeal an adopted notice within 30 days of receipt of the notice and repeals the ordinance within 30 days thereafter.

## CS/CS/CS/HB 829—Attorney's Fees & Costs

- The bill does not apply to ordinances relating to comprehensive planning and growth management, the Florida Building Code, and the Florida Fire Code.
- Local governments may continue to enforce ordinances adopted before February 1, 2019 relating to application of Class B biosolids until the effective date of rules adopted by FDEP or repeal of the local government ordinance or rule, whichever occurs first.
- If approved by the Governor, the act takes effect on July 1, 2019.

# HB 127—Permit Fees

- Requires counties and municipalities to post building permit and inspection fees and building permit and inspection utilization reports on their respective websites.
- Requires local governments to create building permit and inspection utilization report by December 31, 2020 that includes information from the most recent financial audit on the costs of administering building permit and inspection functions and costs of enforcing the Florida Building Code. After December 31, 2020, the report must be updated before the local government makes any adjustments to permit fee and inspection fee schedules.
- If approved by the Governor, the act takes effect July 1, 2019.



# CS/CS/HB 437—Community Development Districts

- ▶ Allows a petition to create a new community development district of less than 2,500 acres to identify contiguous lands which the petitioner anticipates adding to the boundaries of the CDD within 10 years of the effective date of the ordinance establishing the district.
- ▶ Notice must be given to owners of parcels to be identified for future inclusion notice of the filing of the petition to establish the district and a parcel may not be included within the district without the written consent of the owner.



## CS/CS/HB 437—Community Development Districts

- ▶ A person may petition the county or municipality to amend the boundaries of the CDD to include a previously identified parcel that was identified in the ordinance for future inclusion.
- ▶ A CDD may merge with another type of special district created by special act pursuant to the terms of the special act or the process for creating a new CDD pursuant to s. 190.005.



# CS/HB 9—Community Redevelopment Agencies

- ▶ The bill is intended to increase accountability and transparency of CRAs, including by requiring annual ethics training, the use of procurement and purchasing processes of the municipality or county that created the CRA, enhanced reporting requirements, and audit provisions.
- ▶ If approved by the Governor, the bill takes effect October 1, 2019.



# Environmental Bills That Failed



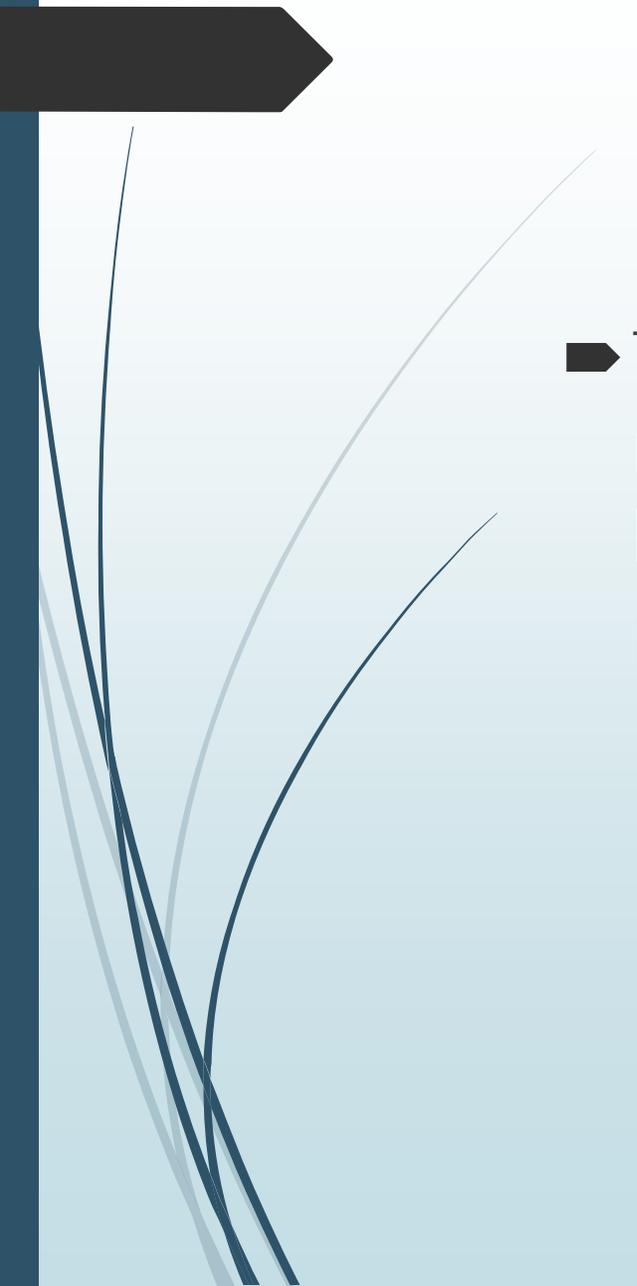
# SB 314—Advanced Well Stimulation Treatment

- ▶ Defines “High-pressure well stimulation” and “matrix acidification.”
- ▶ Prohibits “high-pressure well stimulation” and “matrix acidification” in Florida.
- ▶ Requires the DEP to conduct a study on high-pressure well stimulation and matrix acidification that must be submitted to the Governor, President of the Senate and Speaker of the House by June 30, 2021.



## SB 146/HB 239— Advanced Well Stimulation

- ▶ Defines “Advanced well stimulation treatment” to mean all stages of a well intervention performed by injecting fluids into a rock formation.
  - ▶ Prohibits advanced well stimulation in Florida.
- 

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## HB 7029/SB 7064—Fracking

- ▶ These two committee bills proposed to ban a more limited definition of fracking that would have continued to allow matrix acidizing processes.



## CS/CS/SB 1278

### CS/CS/HB 405—Biosolids

- ▶ Would have prohibited by July 1, 2020, the land application of biosolids on any site where the biosolids application zone interacts with the seasonal high water table.
- ▶ Would have required FDEP to initiate rulemaking by August 1, 2019 for the application of biosolids not subject to the prohibition.



## HB 1395/SB 1758—Waterways Act

- The bill would have required FDEP, in coordination with DOH, to develop a report to be submitted to the Legislature by a specified date on the impacts of transferring the onsite sewage program of DOH to FDEP.
- Requires agricultural operators to sign letters of intent to implement the applicable best management practices within 90 days of adoption of a total maximum daily load if a basin management action plan (BMAP) has not yet been adopted for the impaired waterbody.

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## HB 141/SB 216—Water Quality Improvements

- Among other things, would expand sewage spill notification procedures to require wastewater treatment facilities that have an unlawful spill to notify their customers within 24 hours of the spill.



# HB 141/SB 216—Water Quality Improvements

- Would establish an additional civil penalty for sewage spills of \$1 for each gallon of sewage spilled and a requirement that the wastewater facility spend \$2 per gallon spilled on facility upgrades to remediate the problems giving rise to the spill.



## HB 85/SB 214—Septic Tanks

- Would have required DOH to identify all septic tanks in the state by January 1, 2021.
- Beginning July 1, 2022, owners of septic tanks must have system inspected every 5 years.
- DOH directed to implement program and adopt rules that includes a county-by-county implementation plan with first priority given to septic tanks in spring protection areas, minimum standards for a functioning system, requirements for pump-out and repair and enforcement procedures.



# HB 105/SB 286—Domestic Wastewater Collection System Assessment & Maintenance

- Would have established the Blue Star Collection System Assessment & Maintenance Program within DEP as a voluntary incentive program directed at reducing sanitary sewer overflows from public and private utilities.
- Would have required DEP to adopt by rule certification standards that focus on condition of collection systems and pump stations.



## HB 105/SB 286—Domestic Wastewater Collection System Assessment & Maintenance

- ▶ Would have allowed DEP to reduce penalties for a sanitary sewer overflow based on utility's status as Blue Star certified, and/or reduce a penalty based on the utility's investment in assessment and management activities to identify and correct problems.
- ▶ Passed in 2018 as part of bill that was vetoed.



# SB 282/HB 63—Property Assessed Clean Environment

- Would allow PACE financing mechanism to be used by homeowners to finance the installation of advanced onsite sewage treatment or connections to central sewage systems.
- Defines sewage treatment improvements as a qualifying improvement.

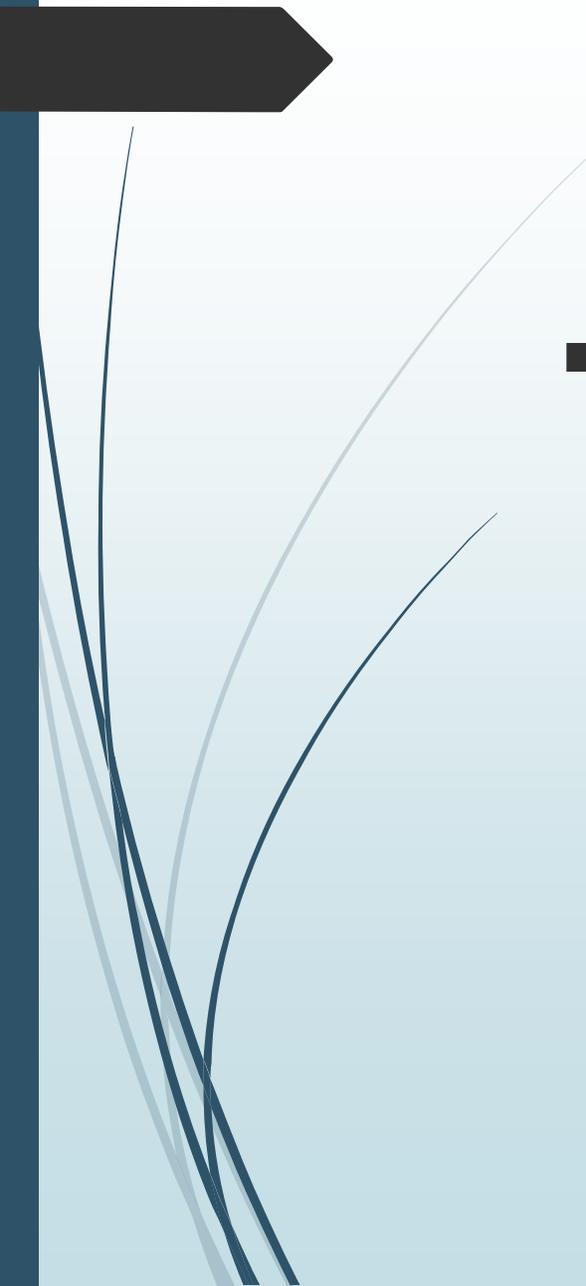
## HB 157—Fertilizers

- ▶ Would have required each county and municipal government to adopt and enforce the most recent version of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.
- ▶ Would have required local governments within an estuary runoff area to identify setbacks from waterbodies and prohibit fertilizer application on residential lawns within those setbacks.
- ▶ Would have allowed local governments to establish more stringent standards, upon demonstration of need and consideration of relevant scientific information.



# SB 88/HB 6033—Preemption of Recyclable and Polystyrene Materials

- Would remove the preemption of local government rules and ordinances that restrict the use of disposable plastic bags set forth in s. 403.7033, F.S.
- Would remove the preemption of local government regulation over the sale of polystyrene products set forth in s. 500.90, F.S.
- Current law authorizes local governments to restrict the use of polystyrene on public property.

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# SB 588/SB 1299—Preemption of Local Regulations

- ▶ Among other things, would have preempted local regulation dealing with:
  - ▶ OTC Drugs and cosmetics (sunscreen).
  - ▶ Alternate generated power.



# SB 222—Renewable Energy

- ▶ Would exempt from the definition of a public utility, property owners that generate and sell energy, produced by a renewable energy source device of up to 2.5 megawatts, to users located on their property.
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# **GROWTH MANAGEMENT / LAND USE BILLS THAT FAILED**

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## SB 428/HB 1091—Private Property Rights in Comprehensive Plans

- ▶ These measures would require local governments to address protection of property rights in their comprehensive plans, and they would require the plan to include a property rights element.



# HB 1383/SB 1720—Private Property Rights/Bert Harris

- ▶ Would require that when a residential property owner reaches a settlement of a Bert Harris claim with a local government, or receives a judgment declaring an inordinate burden, a rebuttable presumption is created that similarly situated property owners are entitled to the same relief.
- ▶ Would create a process for the similarly situated property owners to submit an appraisal and claim for relief.



## HB 1019/SB 1694—Takings Claims Within Areas of Critical State Concern

- ▶ These measures would provide for the apportionment of awards of damages for taking claims within areas of critical state concern.

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## SB 824/HB 987—Vacation Rentals/Preemption

- Once again, bills were filed to preempt the regulation and control of vacation rentals to the state.
- Other bills would provide for state regulation of vacation rentals as well as hosting platforms. These include SB 812/SB 814/SB 1196.



## SB 78/HB 169—Public Financing of Construction Projects / Sea Level Impact

- Would prohibit state-financed contractors from commencing construction of certain structures in coastal areas without first conducting a sea level impact projection study and having such study published and approved by DEP.
- Would require DEP to develop by rule standards for such studies and publish the same on its website.
- Senate Bill reported favorably by first two committees.



# **BILLS OF INTEREST TO GOVERNMENT LAWYERS**



## SB 2500—Bar Dues and CLE

- ▶ Budget authorizes agencies to pay Bar dues and CLE for Government Lawyers
- 



# **PUBLIC RECORDS AND OPEN MEETINGS BILLS THAT PASSED**



# CS/HB 281—Public Records/Voters and Voter Registration

- The bill makes confidential and exempt from public inspection and copying requirements, information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored
- The bill also makes all information concerning 16 and 17-year-olds who preregister to vote confidential and exempt from public inspection and copying requirements until they reach the age of 18.
- If approved by the Governor, these provisions take effect on July 1, 2019.



# CS/CS/HB 327—Public Meetings/Public Records/Local Government Utilities

- Current law provides a public record exemption for certain information held by a utility owned or operated by a unit of local government.
- The bill creates a public meeting exemption for that portion of a meeting held by a local government utility that would reveal the same information.
- If approved by the Governor, these provisions take effect July 1, 2019.

# CS/HB 7021—Financial Disclosure

- The bill revises the administration of the submission of information relating to the disclosures of financial interests and statements of financial interests.
- Among other things, the bill requires the Commission on Ethics to procure and test an electronic filing system by January 1, 2022.
- The bill requires electronic submission of CE Form 6 beginning January 1, 2022, and CE Form 1 beginning January 1, 2023.
- Beginning with required electronic submission of CE Form 1, filers must use the dollar value threshold method of reporting (rather than the comparative or percentage threshold).
- If approved by the Governor, these provisions, except for Section 2, which becomes effective January 1, 2020, take effect upon becoming law.



# CS/HB 7023—Public Records/Financial Disclosure

- ▶ The bill generally exempts from public inspection and copying secure login credentials held by the Commission on Ethics for the purpose of allowing access to the electronic filing system for financial disclosures created in CS/HB 7021.
- ▶ If approved by the Governor, these provisions take effect on the same date that CS/HB 7021 takes effect, if such legislation becomes a law.



# **PUBLIC RECORDS BILLS THAT DIED**



## HB 407/SB 602—Public Records

- ▶ Would prohibit an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.
- ▶ HB 407 passed the House. SB 602 passed the first of three committees of reference.



# HB 759/761 and SB 1414/1416—Trade Secrets

- ▶ These bills were designed to create a uniform trade secret exemption to the Public Records Act and to eliminate what is now a patchwork of sometimes inconsistent trade secret exemptions (including some in Chapter 403), as well as legislative intent language in Section 815.045, which the courts have construed to be a trade secret exemption to the Public Records Act.
- ▶ HB 759/SB 1414 would eliminate the existing trade secret exemptions and HB 761/SB 1416 would create the new uniform trade secret exemption.



# HB 759/761 and SB 1414/1416—Trade Secrets

- ▶ HB 761/SB 1414 would create a new public records exemption for trade secrets as defined in the Uniform Trade Secrets Act.
- ▶ The uniform definition is more narrow than the definition found in some other statutes in key respects.
- ▶ The House bills passed the House; the Senate bills passed the first of three committees of reference.
- ▶ Look for similar legislation to be filed again next year.



# 2020 Regular Session

- Interim Committee Meetings begin September 16, 2019.
  - Regular Session begins January 14, 2020.
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# UNIFORM RULES OF PROCEDURE UPDATE

# THE UNIFORM RULES OF PROCEDURE

- ▶ The APA directs the Administration Commission (Governor and Cabinet) to adopt one or more sets of uniform rules of procedure.
- ▶ The Uniform Rules of Procedure are codified in Chapters 28-101 through -110 and 28-112.
- ▶ They are posted on the DOAH web site.

# UNIFORM RULES OF PROCEDURE

## LAST REVISED IN 2013

- ▶ The Uniform Rules were last updated in 2013, based on recommendations from the Administrative Law Section of The Florida Bar. These recommendations were developed by an ad hoc committee and approved by the Section's Executive Council.
- ▶ These changes are summarized in the [April 2013 issue](#) of the ALS newsletter.
- ▶ An ad hoc committee has been tasked with reviewing the Uniform Rules and recommending updates.
- ▶ As in 2013, any amendments to the Uniform Rules must be formally proposed and adopted by the Administration Commission before they may become effective.

# ALS AD HOC UNIFORM RULES OF PROCEDURE COMMITTEE

- ▶ ALJ Yolonda Green
- ▶ ALJ Elizabeth McArthur
- ▶ ALJ LI Nelson
- ▶ ALJ David Watkins
- ▶ Seann Frazer
- ▶ Shaw Stiller
- ▶ Paul Drake, Reporter
- ▶ Larry Sellers, Chair



# **SUMMARY OF RECOMMENDED CHANGES TO DATE (May 30 Draft)**

# Rule 28-101.001 Statement of Agency Organization and Operation

- ▶ Requires agencies to describe how to e-file documents as part of their statement of agency organization and operation.

## Rule 28-105.003 Agency Disposition

- ▶ Removes unnecessary language stating that, if an agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly notice public meeting.

## Rule 28-105.027 Intervention

- ▶ Revises rule governing intervention in declaratory statement proceedings.
- ▶ Provides that an intervenor may, within 7 days of (or such later time as specified in) the order granting intervention, file a response to the petition for declaratory statement.
- ▶ Prohibits reply or other paper directed to a timely response absent leave granted by order of the presiding officer.

## Rule 28-106.103 Computation of Time

- ▶ Adds to Saturdays, Sundays and legal holidays, “any other day in which the agency clerk’s office is closed.”
- ▶ Such days are not included as the last day of a period of time or when the period of time is less than 7 days.

## Rule 28-106.104 Filing

- ▶ Provides that a document that has been e-filed shall be deemed “received” by the recipient for purposes of the Uniform Rules or any order of a presiding officer.
- ▶ Requires pleadings to include the Florida Bar number, if applicable, of the person filing the pleading.

## Rule 28-106.105 Appearances

- ▶ A qualified representative who has filed a request for hearing is deemed the qualified representative until the presiding officer makes the determination required by Rule 28-106.106 (relating to qualified representatives).
- ▶ This change requires the party seeking representation by a qualified representative who filed the initial pleading to make the filing required by Rule 28-106.106 within 7 days of assignment of a presiding officer.

# Rule 28-106.106 Who May Appear; Criteria for Qualified Representatives

- Requires a person seeking representation by a qualified representative to make the required filing as soon as practicable if the representative did not file the initial pleading.
- Provides that attorneys appearing in administrative proceedings must be members of the Florida Bar in good standing.
- Clarifies that attorney's licensed in other jurisdictions must file a written request to appear as a qualified representative.

# Rule 28-106.106 Who May Appear; Criteria for Qualified Representatives

- ▶ Requires a qualified representative to disclose: (a) prior proceedings in which they have been granted or denied permission to appear as a representative and (b) whether they have been denied admission to the Bar of any jurisdiction.
- ▶ Requires a lawyer seeking to appear as a qualified representative to disclose all jurisdictions where the lawyer is licensed to practice.
- ▶ Prohibits a person who is admitted to practice in any jurisdiction from being a qualified representative if that person has been disbarred or is currently suspended in any jurisdiction or is a member of The Florida Bar but ineligible to practice.

## Rule 28-106.110 Service of Papers

- ▶ Consistent with other changes, requires that if the address of record includes an e-mail address, service shall be by e-mail.

# Rule 28-106.111 Point of Entry into Proceedings and Mediation

- ▶ Requires the notice of administrative rights to include directions on how to e-file.
- ▶ Requires the notice of administrative rights to advise of the right to request an extension of time to file a request for hearing.

## Rule 28-106.204 Motions

- ▶ Revises the provision governing duty to confer to also require the movant to indicate whether any party intends to file a response to the motion.

## Rule 28-106.205 Intervention

- ▶ Requires an intervenor who seeks to raise new issues to also include the information required by Rule 28-106.201(2)(c)-(g) (prescribing contents of petition).
- ▶ This information includes: a statement of all disputed issues of material fact, a concise statement of ultimate facts, a statement of the specific rules or statutes that require reversal or modification of the agency's position, and a statement of relief sought.

# Rule 28-106.2115 Motions to Disqualify

- ▶ New rule created to prescribe the process to be used and the standards for evaluating a motion to disqualify a presiding officer. Much of the text mirrors the provisions of the Rules of Judicial Administration governing such motions, while adjusting the process to comport with the time frames in Section 120.569(2)(a), F.S.

## Rule 28-106.213 Evidence

- ▶ Requires a party seeking to offer testimony by telephone to advise the presiding officer at least 5 days prior to the date noticed for the final hearing.

# Rule 28-106.214 Recordation

- ▶ Establishes a procedure for the use of interpreters and translators.

## Rule 28-106.217 Exceptions and Responses

- ▶ Consistent with other changes, requires that if the address of record includes an e-mail address, then service of any exceptions or responses shall be by e-mail.

# Rule 28-106.303 Motions

- ▶ Conforms to Rule 28-106.204 and requires that the motion state whether any party intends to file a response to the motion.

## Rule 28-106.501 Emergency Action

- ▶ Provides that the required administrative proceedings be instituted “contemporaneously with” rather than simply “within 20 days after” the emergency suspension, limitation or restriction of a license.
- ▶ Conforms the rule to the statutory requirement that such proceedings be “promptly instituted and acted upon.”

## Rule 28-110.002 Definitions

- ▶ Revises the definition of “decision or intended decision” to include a determination that eliminates or has the effect of eliminating a response or responses to a solicitation from further consideration, evaluation, or participation in negotiations.

## Rule 28-110.003 Notice of Protest

- ▶ These are conforming changes designed to clarify that the notice of protest is to be addressed to the agency clerk of the agency that issued the solicitation or made any other decision that is intended to be protested, unless otherwise designated by the solicitation.

## Rule 28-110.005 Bond

- ▶ Clarifies that a protest bond is due at the time of filing a formal written protest.
- ▶ Makes changes to the protest bond form to simplify the form and remove references to exceptional purchases, which are uncommon.

# SUGGESTIONS STILL UNDER CONSIDERATION

- ▶ Some suggestions are still under consideration.

# SUGGESTIONS CONSIDERED BUT NOT RECOMMENDED

- Motions for reconsideration or rehearing (as at PSC).
- Changing filing deadline from 5:00 p.m. to conform to RJAs.
- E-service by DOAH (authorizing legislation not enacted).
- Extending from 7 days to 10 days the time for filing a response to motions.
- Defining “good cause” for continuances.
- Requiring a continuance to be granted if agreed to by all parties.
- Requiring a “certified” court reporter.

# SPECIAL THANKS TO THOSE WHO SUBMITTED SUGGESTIONS

- ▶ Attorneys at PERC
- ▶ ALJ Gary Early
- ▶ Laura Gaffney
- ▶ Mike Glazer
- ▶ David Miller
- ▶ Eric Miller
- ▶ ALJ John Newton
- ▶ Richard Shoop
- ▶ ALJ Suzanne Van Wyk
- ▶ Karen Walker

# PLEASE SUBMIT SUGGESTIONS

▶ Larry Sellers – [larry.sellers@hkclaw.com](mailto:larry.sellers@hkclaw.com)

# ANY AMENDMENTS MUST BE FORMALLY ADOPTED

- ▶ REMINDER: As in 2013, any amendments to the Uniform Rules must be formally proposed and adopted by the Administration Commission before they may become effective.