

**INTER-OFFICE COMMUNICATION**

DATE: May 16, 2011

TO: Honorable Mayor and City Commission

FROM: Christopher Cooper, Legislative and Grants Coordinator

VIA: Russ Blackburn, City Manager

SUBJECT: State of Florida Legislative Session – End of Session Review

The following is a review of legislation that was passed during the 2011 State of Florida Legislative Session. The overview contains updates on city priorities as well as general legislation that may impact the City of Gainesville. Additionally, an overview of the session prepared by the Florida League of Cities is attached.

CITY OF GAINESVILLE LEGISLATIVE PRIORITIES – BILLS THAT PASSED**Amend Regulations Governing the Use of Student Fees by State Colleges**

SB 2150 (Post Secondary Education Funding) includes a provision to allow Santa Fe College to establish a transportation access fee. The fee may be used to provide or improve access to transportation services for students of Santa Fe College. Santa Fe student government is required to hold a referendum to approve the application of the fee. The fee may not exceed \$6 per credit hour and a fee increase can only occur once per fiscal year and can only be implemented at the beginning of the fall term. SB 2150, including the Santa Fe College transportation access fee, was passed by the legislature and submitted to the Governor.

CITY OF GAINESVILLE LEGISLATIVE PRIORITIES – BILLS THAT FAILED**Internet Gaming Establishments**

SB 576 (Gambling Devices – Oelrich) and CS/HB 217 (Prohibition of Simulated Gaming Devices – Perry, Chestnut and others) both essentially would have prohibited Internet Café operations which offer simulated gaming on electronic devices. Both bill died in committee.

Operation of Radios or Other Mechanical Sound-Making Devices in Vehicles

CS/SB 886 (Motor Vehicles – Oelrich) and HB 643 (Motor Vehicles – Chestnut) sought to revise the penalty for the unlawful operation of a sound-making device in a motor vehicle. The penalty would have become a moving violation with points assessed against the driver's license and subsequent violations would result in an increased fine amount. The House Bill died in committee and the Senate Bill was defeated on third reading by a floor vote.

Office of the City Manager
P.O. Box 490, Station 6
Gainesville, FL 32602-0490
(352) 334-5010 – (352) 334-3119-fax

CONSTITUTIONAL AMENDMENTS THAT PASSED - PROPOSED FOR THE NOVEMBER 2012 GENERAL ELECTION

State Revenue Limitation

SJR 958 is a Constitutional Amendment that if passed will impose a limit on state revenues based on a formula that includes changes in population and inflation. Beginning in FY 2014-2015, state revenues will be limited to an amount equal to the state revenues collected the previous fiscal year multiplied by a formula based on growth. The state legislature may override the limitation or may submit an increase for voter approval.

Additional Homestead Exemption

HJR 381 is an amendment to the state constitution that will reduce the current assessment limitation on non-homestead property from 10-percent to 5-percent. The cap will sunset in 2023. The amendment also will create a first-time homesteader tax exemption that will provide an additional homestead exemption of 50-percent of the just value, up to the median home value in each county. This will apply to individuals who have not received a homestead exemption in the past three years. Lastly, the amendment allows the Legislature to prohibit increases in the assessed value of homestead property if the just value of the property decreases.

BILLS THAT PASSED

Growth Management

HB 7207 was this year's comprehensive growth management reform legislation, and was passed as a conforming bill that was added onto the budget. This legislation mainly removes state government oversight from the comprehensive planning process. It also makes the existing pilot program for expedited review of comprehensive plan amendments applicable statewide. This program reduces the scope and scale of state agency review of plan amendments. Additionally, HB 7207 does the following: school and transportation concurrency is optional for local governments; reduces the burden on cities associated with the preparation of evaluation and appraisal reports; changes the burden of proof in legal challenges to local government comprehensive plan amendments to a "fairly debatable" standard; and provides a new process for state agency review of plan amendments that are not subject to the expedited review process. A summary of HB 7207 produced by the law firm Carlton Fields is attached.

Public Retirement Plans

CS/CS/SB1128 (Public Retirement Plans) revises the definition of compensation for all local government defined benefit retirement plans. For plans that are not subject to collective bargaining, for service earned on or after July 1, 2011, up to 300 hours of overtime compensation may be included for pension purposes as specified in the plan, but payments for accrued unused sick or annual leave may not be included. For plans that are subject to collective bargaining, effective for the first agreement reached on or after July 1, 2011, for service earned on or after that date, up to 300 hours of overtime compensation may be included for pension purposes are specified in the collective bargaining agreement or plan, but payments for accrued unused sick or annual leave may not be included. Among other provisions, the bill eliminates the requirement in Chapters 175 and 185, Florida Statutes, that pension benefits be increased whenever member contributions are increased.

Elections

CS/CS/HB 1355 (Elections) among other things, includes provisions to set the date for the Presidential Preference Primary election. The bill creates a Presidential Preference Primary Date Selection Committee made up of the Secretary of State; three members, no more than two of whom will be from the same

political party, appointed by the Governor; three members, no more than two of whom will be from the same political party, appointed by the Speaker of the House of Representatives; and three members, no more than two of whom will be from the same political party, appointed by the President of the Senate. The committee shall meet and set the primary election date no later than October 1 of the year preceding the presidential preference primary. The date selected can be no earlier than the first Tuesday in January and no later than the first Tuesday in March.

Attachment (2)

Volume 37 - Issue 12: May 9, 2011

Words from the Legislative Director

2011 Legislative Session Adjourns

by Rebecca O'Hara

This is the final edition of the *Legislative Bulletin* for the 2011 session. The Legislature adjourned sine die at 3:30 a.m. on Saturday, May 7. For a comprehensive summary of bills that passed or failed in the 2011 session, please stay tuned for the League's *Final Report* on the 2011 session. It will be published in late-May. Please contact the League if you have questions about the status of any bill.

Budget Summary

Budget Summary

by Source

The Florida Legislature has passed the nearly \$70 billion budget. The Legislature swept almost \$530 million to close the \$3.8 billion shortfall, including \$193 million from what currently remains in the Sadowski Trust Fund. The House and Senate have also agreed to permanently redirect documentary stamp tax revenues from the Sadowski Trust Fund to the state's general revenue. The agreement includes \$308 million in tax relief, but most of it is in property tax. The largest piece of tax relief would come at the expense of the state's five water management districts. Their property taxes would be cut by \$210.5 million. The budget includes a \$1.4-billion cut to public schools and \$700 million in cuts to Medicaid reimbursements. A three-day back-to-school sales tax holiday that would set the state back \$25.6 million is also included.

FLC Legislative Priorities

Growth Management (Support)

by Source

[HB 7207 \(Select Committee on Government Reorganization\)](#), this year's comprehensive growth management reform, was passed as a conforming bill that was added onto the budget. HB 7207 is composed of compromise language between the House and Senate versions of HB 7129 and SB 1122. HB 7207 largely removes state government oversight from the comprehensive planning process. The bill makes the existing pilot program for expedited review of comprehensive plan amendments applicable statewide. Most comprehensive plan amendments would now qualify for this expedited review process, which reduces the scope and scale of state agency review of plan amendments. In addition, the bill makes school and transportation concurrency optional for local governments. The bill substantially reduces the burdens on cities associated with the preparation of evaluation and appraisal reports. The state is now limited to comment on areas of state or critical concern. HB 7207 changes the burden of proof in legal challenges to local government comprehensive plan amendments to the more deferential "fairly debatable" standard. HB 7207 provides a new process for state agency review of plan amendments that are not subject to the expedited review process. This process retains the requirement for preparation of an objection, recommendations and comments report by the state land planning agency, but limits the scope of agency comments to issues that substantially impact important state resources or facilities. The provisions of HB 7207 were placed on a conforming bill in the budget. ([Matthews](#))

Relating to State Revenue Limitation

by Source

[CS/SJR 958](#) ([Senate Budget Subcommittee on Finance and Tax](#)) is an amendment to the state constitution to revise the existing limitation on state government revenue. The new state revenue cap will be based on inflation and population changes. The constitutional amendment requires 60 percent of the voter approval at the 2012 general election. CS/SJR 958 passed the Legislature. ([Hughes](#))

Governmental Reorganization - Economic Development

by Source

[SB 2156](#) ([Senate Budget Committee](#)) is comprehensive legislation streamlining, repealing and redefining various agency duties and functions. The bill creates a new state agency, the Florida Department of Economic Opportunity, which is charged with consolidation of state government, reducing regulations and avoiding duplicative oversight. The bill provides for a transition period for the transfer of agencies to be completed by October 1, 2011. SB 2156 transfers the Florida Communities Trust program and the Stan Mayfield Working Waterfronts program from the Department of Community Affairs to the Department of Environmental Protection. Several existing trust funds are also transferred under the control of the Department of Economic Opportunity, including the State Housing Trust Fund, the Florida Small Cities Community Development Block Grant Trust Fund and the Economic Development Trust Fund. Municipalities with populations of more than 25,000 are required to annually submit a brief overview of the strengths, services and economic development incentives offered by the city to Enterprise Florida. The bill also authorizes the Department of Economic Opportunity to expand the boundaries of enterprise zones near rural areas of critical concern, under certain circumstances. SB 2156 was addressed during House and Senate budget negotiations and agreement was reached on several portions of the bill. Additional information will be provided in the final report. ([Pratt](#))

Energy

by Source

[CS/SB 2078](#) ([Senate Communications, Energy, and Public Utilities Committee](#)) and [HB 7217](#) ([House Energy and Utilities Subcommittee](#)) were comprehensive energy-related bills that addressed renewable energy, energy conservation and economic development. Generally, the bills revised the current statements of legislative intent with respect to Florida's energy policy and the development of renewable energy. Both bills authorized public utilities, subject to specified conditions, to recover the costs to produce or purchase renewable energy. The bills required a utility to purchase renewable energy from renewable energy resources other than solar energy. The bills abolished the Florida Energy and Climate Commission and transferred its powers, duties and functions from the Governor's Office to the Department of Agriculture and Consumer Services. Additionally, the powers, duties and functions of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program were to be transferred from the Department of Community Affairs to the Department of Agriculture and Consumer Services. CS/SB 2078 died in the [Senate Budget Committee](#). and HB 7217 died in the [House State Affairs Committee](#). ([Dudley](#))

Pension Reform (Support – FLC Priority)

by Source

[CS/CS/SB 1128 \(Ring\)](#) provides the following reforms for local pensions, including police and fire pensions:

The bill revises the definition of compensation for all local government defined benefit retirement plans (general employee, police, fire and other plans). For plans that are not subject to collective bargaining, for service earned on or after July 1, 2011, up to 300 hours of overtime compensation may be included for pension purposes as specified in the plan, but payments for accrued unused sick or annual leave may not be included. For plans that are subject to collective bargaining, effective for the first agreement reached on or after July 1, 2011, for service earned on or after that date, up to 300 hours of overtime compensation may be included for pension purposes as specified in the collective bargaining agreement or plan, but payments for accrued unused sick or annual leave may not be included.

The bill prohibits the use of an actuarial or cash surplus in a government pension plan for any expenses outside the plan. It also prohibits the reduction of plan sponsor contributions to a local government pension plan below the normal cost.

The bill requires that all actuarial reports disclose the present value of a defined benefit plan's accrued vested, nonvested and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return (currently 7.75 percent), "to promote the comparability of actuarial data between local plans."

The bill eliminates the requirement in Chapters 175 and 185 that pension benefits be increased whenever member contributions are increased. It also amends Chapters 175 and 185 to allow a city with a local law plan in existence on June 30, 1986, to change the city's representation on the pension board, only if the change does not reduce the membership percentage of firefighters and police officers on the board. The bill revises the "deemed in compliance" grandfather date in Chapters 175 and 185 for plans established pursuant to special act, from May 23, 1939 to May 27, 1939.

The bill directs the Department of Management Services to provide a fact sheet on each local government defined benefit pension plan summarizing the plan's actuarial status. The fact sheet must contain a summary of the plan's most recent actuarial data, minimum funding requirements as a percentage of pay, and a five-year history of funded ratios. The fact sheets must be posted on the department's website, and plan sponsors that have websites must provide a link to the department's website. The bill also directs the Department of Management Services to develop a standardized rating system for local government defined benefit pension plans.

The bill creates a Task Force on Public Employee Disability Presumptions. The task force will be made up of management and union/employee representatives appointed by the Senate president and House speaker, as well as employees of the Department of Management Services and the chief financial officer. The task force report and recommendations must be submitted to the Legislature by January 1, 2012.

The bill does not change current law relating to how insurance premium tax revenues are required to be spent, nor does it change the requirement to use additional insurance premium tax revenues to provide extra pension benefits to firefighters or police officers.

CS/CS/SB 1128 passed the Legislature. Please thank Sen. Jeremy Ring, Rep. Jimmy Patronis and Rep. Seth McKeel for their help in passing the bill. ([Conn](#))

Public Officers/Severance Pay (Oppose – FLC Priority)

by Source

[CS/CS/CS/SB 88](#) ([Gaetz](#)) restricts severance pay for any public officer, agent, employee or contractor. The bill allows up to 20 weeks of severance pay under limited circumstances. Employment contracts entered into before July 1, 2011, that have severance pay provisions are grandfathered, but a contract renewal or renegotiation after July 1, 2011, requires compliance with the restriction. The bill permits severance pay if it represents settlement of an employment dispute, but the severance is limited to six weeks. Any agreement or contract involving severance pay or extra compensation may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract. The bill also establishes standards for bonus programs offered by governmental entities. CS/CS/CS/SB 88 passed the Legislature. ([Conn](#))

Major Bills That Passed - Education

Charter Schools (Oppose)

by Source

[CS/CS/CS/SB 1546](#) ([Thrasher](#)) exempts charter schools from payment of proportionate share mitigation, which expands a current exemption from payment and impact fees and other exactions. The bill includes a preemption of local government site development restrictions, such as parking or size of the school, and requires local governments to provide a level of regulation consistent with that accorded to public schools. CS/CS/CS/SB 1546 passed the Legislature. ([Pratt](#))

Major Bills That Failed - Energy & Environmental

Consumptive Use Permits and Reclaimed Water (Support)

by Source

[HB 1001](#) ([Williams, T.](#)) and [CS/CS/SB 1514](#) ([Latvala](#)) required consumptive use permits (CUP) to be issued for a period of 20 years and revised the authority of the governing board of a water management district to issue CUPS for up to 50 years under certain conditions. HB 1001 and CS/CS/SB 1514 eliminated requirements for permit compliance reports to be submitted every five years and repealed the authority of the Department of Environmental Protection (DEP) and water management district governing boards to modify or revoke consumptive use permits. The bills authorized the establishment of "mandatory reuse zones" by authorizing a local government to require water users to connect to a reclaimed water system for irrigation and other nonpotable uses. HB 1001 and CS/CS/SB 1514 created a new 20-year "sustainable water use permit" and established the permit application and issuance requirements, as well as the monitoring, compliance and performance requirements for these permits. The bills directed the water management districts to consult with the DEP and provide reports outlining options for improving coordination between the consumptive use process and the water supply planning process. HB 1001 died in the [House Agriculture and Natural Resources Subcommittee](#). CS/CS/SB 1514 died in the [Senate Budget Committee](#). ([Scott Dudley](#))

Water Management District/Basin Boards Governance (Support)

by Source

[CS/CS/HB 649](#) ([Pilon](#)) and [CS/SB 882](#) ([Detert](#)) would have revised the makeup of water basin boards and the functions and operations of a basin board. The bills clarified local government authority to adopt ordinances that implement landscape irrigation restrictions set forth in water management

district rules or orders. CS/CS/HB 649 died in Senate messages, and CS/SB 882 died in the [Senate Budget Committee](#). ([Dudley](#))

Ocean Outfalls (Support)

by Source

[CS/HB 613](#) ([Trujillo](#)) and [CS/CS/SB 796](#) ([Diaz de la Portilla](#)) would have extended the current compliance deadlines from December 2025 until December 2030 prohibiting ocean discharges by waste water treatment plants. The bills also exempted a percentage of the utilities' peak flows from both the advanced wastewater treatment standards of discharges through ocean outfalls and the prohibition on discharges through ocean outfalls entirely. The Department of Environmental Protection was required to submit a report to the Legislature by February 15, 2019, detailing any changes needed to the reuse requirement. CS/HB 613 died in Senate messages, and CS/CS/SB 796 died in the [Senate Budget Committee](#). ([Dudley](#))

Onsite Sewage Treatment and Disposal Systems (Oppose)

by Source

[HB 13](#) ([Coley](#)) and [CS/CS/CS/SB 1698](#) ([Dean](#)) would have repealed legislation adopted during the 2010 session creating a mandatory statewide onsite sewage treatment disposal systems (septic tank) evaluation program. HB 13 simply eliminated the inspection program, the procedures and criteria for the evaluation and inspection program, as well as the grant program established to subsidize the cost of repairing septic systems. CS/CS/CS/SB 1698 required local governments to adopt a "model" septic tank inspection program for some or all of the area within their boundaries. Local governments were authorized to opt out of enacting an inspection program, except those local governments within a springshed area. CS/CS/CS/SB 1698 included a grandfather provision for existing septic system inspection programs in effect prior to July 1, 2011, but otherwise prohibited any new ordinances from being more stringent than the model ordinance. CS/CS/CS/SB 1698 prohibited local governments from requiring a septic tank inspection at the point of sale, as well as requiring modifications or upgrades to septic systems unless bedrooms are added. SB 2002, the general appropriations implementing legislation, contained language that prohibited the Department of Health from implementing the mandatory inspection program absent approval from the Legislative Budget Committee. This language effectively repeals the mandatory septic tank inspection program for one year. HB 13 died in Senate messages. CS/CS/CS/SB 1698 died on the Senate special order calendar. ([Dudley](#))

Environmental Permitting (Oppose)

by Source

[CS/CS/CS/HB 991](#) ([Patronis](#)) and [SB 1404](#) ([Evers](#)) addressed a variety of regulatory and permitting issues. SB 1404 was never heard by any Senate committee; thus, there were substantial differences between CS/CS/CS/HB 991 and SB 1404. Of primary concern was language in the bills prohibiting municipalities from requiring that, as a condition of approval for a development permit, an applicant obtain a permit or approval from any other state or federal agency. Local governments would have been protected from liability if an applicant failed to meet state or federal standards and were authorized to include as a permit condition, a requirement that all applicable state or federal permits be obtained prior to development. The bills revised the criteria relating to third party standing in permit challenges by placing the burden on the petitioner initiating the action to prove the case in opposition to the license, permit or conceptual approval through the presentation of competent and

substantial evidence. The bills also substantially revised the current process for agency requests for addition information. The bills expanded the existing incentive-based permitting program to apply to all permits issued under Chapters 373 and 403, Florida Statutes. CS/CS/CS/HB 991 and SB 1404 required a county or municipality with a population of 400,000 or more with a local pollution control to apply for delegation of authority from the Florida Department of Environmental Protection (DEP) by June 1, 2013. Any county or municipality that failed to receive delegation authority by June 1, 2015, would not have been able to require permits that use substantially similar to the requirements of an environmental resource permit (ERP). Similarly, the DEP and the water management districts were prohibited from regulating activities subject to the delegation once it was granted to the local government, absent an agreement to the contrary. The bills expanded the “good actor” permitting provisions of current law by authorizing the DEP to consider an applicant’s history of compliance with permit conditions when the department considers the issue or re-issue of a permit. The bills extended, up to 20 years, permits issued to a solid waste management facility with a leachate control system. Finally, the bills authorized certain entities created by special act or local ordinance or interlocal agreement by counties or municipalities to be eligible for reduced or waived permit processing fees from the DEP. The bills would have made other substantive changes to laws relating to growth management, permitting, regional planning and other regulatory programs. CS/CS/CS/HB 991 died in Senate messages, and SB 1404 died in the [Senate Environmental Preservation and Conservation Committee](#). ([Dudley](#))

Water Management Plans and Programs (Support)

by Source

[CS/CS/HB 389](#) ([Glorioso](#)) and [CS/CS/SB 934](#) ([Storms](#)) authorized local governments that have created a community redevelopment area or an urban infill and redevelopment area to develop and adopt a stormwater adaptive management plan that addresses the quantity and quality of stormwater discharges for the redevelopment or infill area. The bills also established a process for the local government to obtain a conceptual permit from the water management district or Florida Department of Environmental Protection. Urban redevelopment projects that met the criteria established in the conceptual permit would have qualified as a noticed general permit that authorized construction and operation for the duration of the conceptual permit. CS/CS/SB 934 died on the Senate calendar, and CS/CS/HB 389 died in Senate messages. ([Dudley](#))

Fertilizer Regulations (Oppose – Preemption)

by Source

[CS/CS/CS/HB 457](#) ([Ingram](#)) and [CS/SB 606](#) ([Evers](#)) would have preempted local government authority to ban the sale of urban fertilizers and modified the process by which a local government could adopt fertilizer management practices that are more stringent than the statutory Model Fertilizer Ordinance created by the Florida Department of Environmental Protection and the Florida Department of Agriculture and Consumer Services. The bills included a grandfather provision protecting existing bans on the sale of fertilizers, provided such bans were adopted prior to July 1, 2011. CS/CS/CS/HB 457 died in Senate messages, and CS/SB 606 died on the Senate calendar. HB 7215, which passed, included the language prohibiting a local government from banning the sale of fertilizer unless the local government had an ordinance in place by July 1, 2011. ([Dudley](#))

Numeric Nutrient Criteria (Support)

by Source

[CS/CS/CS/HB 239 \(Williams, T.\)](#) and [CS/SB 1090 \(Dean\)](#) would have prohibited the state, water management districts and local governments from implementing the U.S. Environmental Protection Agency numeric nutrient criteria rules. The bills required the Florida Department of Environmental Protection to enter rulemaking to revise the state classification of surface waters. CS/CS/CS/HB 239 died in Senate messages, and CS/SB 1090 died in the [Senate Environmental Preservation and Conservation Committee](#). ([Dudley](#))

Major Bills that Passed - Property Rights

Bert Harris Private Property Rights Act (Oppose)

by Source

[CS/CS/HB 701 \(Eisnaugle\)](#) revises the Bert Harris Private Property Rights Act, which was originally enacted in 1995. The Bert Harris Act encompasses government actions that constitute an “inordinate burden” on a citizen’s property. An inordinate burden is defined as an action of one or more governmental entities that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property. The changes made to the bill this year include language which provides that a temporary burden of one year or more “may” be distinguished as an inordinate burden. The bill narrows the time frame with which the government and the claimant have to negotiate a settlement. Settlement can be achieved through a change in zoning, density, ordinance or a monetary settlement. The changes to the bill clarify what constitutes “enacting an ordinance,” as well as what constitutes “applying an ordinance.” The bill specifies that an ordinance placing an inordinate burden on property is applied if that burden is clear and unequivocal. Finally, the bill clearly states that sovereign immunity does not apply to Bert Harris Act claims. CS/CS/HB 701 now awaits the governor’s signature for placement into law. ([Matthews](#))

Major Bills That Passed - Energy & Environmental

Permit Challenges

by Source

[CS/CS/CS/HB 993 \(Roberson\)](#) amends agency rulemaking procedures under the Administrative Procedure Act and revises various provisions to align with legislative ratification requirements enacted in 2010. Certain rulemaking timeframes are conformed to other periods required in the statutory rulemaking process. The bill also provides for withdrawal of rules that are not effective because they were not ratified by the Legislature, and it exempts certain rulemaking from ratification requirements. The bill includes controversial language that requires an individual challenging a permit issued under Chapters 373, 378 or 403, Florida Statutes, to prove that the permitted project would harm the environment. Current law requires developers to show their projects would not harm the environment. CS/CS/CS/HB 993 passed the Legislature and is on its way to the governor. ([Dudley](#))

Department of Agriculture (Oppose—Preemption)

by Source

[CS/CS/HB 7215 \(House Agriculture and Natural Resources Subcommittee\)](#) addresses a variety of issues relating to agriculture and the powers and duties of the Florida Department of Agriculture and Consumer Services (DACS). Of primary importance to municipalities, the bill includes language that preempts local governments from regulating the sale, composition, formulation and distribution of

commercial fertilizers. The bill includes a grandfather provision for counties that have existing ordinances regulating the sale of urban turf fertilizers. The DACS authority regarding pollution control and the regulation of open burning connected with land-clearing, agricultural or forestry operations is also revised by the bill. CS/CS/HB 7215 passed the Legislature and is on its way to the governor. ([Dudley](#))

Major Bills That Passed - Finance and Taxation

Local Government Accountability

by Source

[CS/SB 224](#) ([Dean](#)) changes the schedule for submitting a local governmental entity's annual audit report and annual financial report from 12 to nine month, changes provisions relating to the preparation of municipal budgets and requires the budgets to be posted on the website of the municipality. The Legislative Auditing Committee can take action against audited entities that fail to take corrective action or fail to give a reasonable explanation on lack of corrective action in response to the audit recommendations. CS/SB 224 passed the Legislature. ([Hughes](#))

Local Business Taxes (Watch)

by Source

[CS/CS/CS/HB 311](#) ([Roberson](#)) exempts an individual engaging in or managing a business in an individual capacity as an employee of another person from local business tax requirements. It also prohibits a local governing authority from holding an exempt employee liable for the failure of the employer to comply with certain local business tax requirements. An exemption of this provision has been included for local business tax ordinances adopted before October 13, 2010. CS/CS/CS/HB 311 passed the Legislature. ([Hughes](#))

Property Assessment (Oppose -- Unfunded Mandate)

by Source

[CS/CS/CS/CS/CS/HJR 381](#) ([Dorworth](#)) is an amendment to the state constitution that reduces the current assessment limitation on non-homestead real property from 10 percent to 5 percent. The 5 percent cap will sunset in 2023. The constitutional amendment creates a first-time homesteader tax exemption that gives an additional homestead exemption of 50 percent of just value of the property, up to the median home value in each county, to individuals who have not received a homestead exemption in the past three years. This exemption applies only to non-school property taxes and diminishes to zero in five years. The constitutional amendment also allows the Legislature by general law to prohibit increases in the assessed value of homestead property if the just value of the property decreases. The implementing bill also passed. It sets the effective dates of the constitutional amendment if it is approved by 60 percent of the voters in the 2012 general election. CS/CS/CS/CS/CS/HJR 381 pass the Legislature. ([Hughes](#))

Major Bills That Passed - General Government

Regulation of Firearms and Ammunition

by Source

[CS/CS/CS/HB 45](#) ([Gaetz](#)) imposes a financial penalty on governments, elected officials or staff that adopt policies or take enforcement action that violates the existing state law preemption of firearm and ammunition regulation. City officials or employees who are found to have willfully and knowingly violated the preemption would be personally liable for a fine of no more than \$5,000. A government entity could be liable for actual damages up to \$100,000 and for the plaintiff's attorney's fees. For example, under the bill, an elected city official passing or a city employee enforcing an ordinance prohibiting guns in parks, discharging guns within city limits, or otherwise restricting guns could be personally liable as provided in the bill. CS/CS/CS/45 passed the Legislature. ([Conn](#))

Vacation Rentals (Oppose – Preemption)

by Source

[CS/CS/CS/HB 883](#) ([Horner](#)) and CS/CS/SB 476 ([Evers](#)) preempt local governments from treating vacation rentals differently than other residential properties based solely on their classification, use or occupancy. Both bills were amended to grandfather those local governments with ordinances regulating vacation rentals existing prior to June 1, 2011. CS/CS/CS/HB 883 passed the Legislature. CS/CS/SB 476 was laid on the table in the Senate. ([Cook](#))

Gun Bill – Open Carry

by Source

[CS/CS/SB 234](#) ([Evers](#)) was amended to clarify that licensed concealed weapons permit (CWP) holders cannot be charged with a crime if their concealed firearm is briefly and openly displayed to another person, unless the firearm is intentionally displayed in an angry or threatening manner. The bill also allows for people with concealed weapons permits to carry or store firearms in their vehicle for lawful purposes. Early versions of the bill would have allowed CWP holders to openly carry firearms in public. CS/CS/SB 234 passed the Legislature. ([Cook](#))

Florida Retirement System

by Source

[SB 2100](#) ([Senate Budget Committee](#)) incorporates the Senate and House agreed-to changes to the Florida Retirement System (FRS). SB 2100 is a budget-related bill. The agreed FRS changes include:

- Three percent employee contribution for all FRS members beginning July 1, 2011.
- Average final compensation will be the highest eight fiscal years of compensation for members who first join the FRS on or after July 1, 2011 (now highest five years).
- Eight-year vesting period for members who first join the FRS on or after July 1, 2011 (now six years).
- Increases the normal retirement date for regular class members, senior managers and elected officers who first join the FRS on or after July 1, 2011, to age 65 with eight years of service or 33 years of service regardless of age (now age 62 with six years of service or 30 years of service regardless of age).
- Increases the normal retirement age for special risk members who first join the FRS on or after July 1, 2011, to age 60 with eight years of service or 30 years of service regardless of age (now age 55 with six years of service or 25 years of service regardless of age).

- Eliminates the 3 percent FRS cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. The current COLA would continue to apply to service earned prior to that date. Subject to the availability of funding, the 3 percent COLA will be reinstated effective June 30, 2016.
- Maintains the current DROP program, but reduces the DROP interest rate to 1.3 percent for members who enter the DROP on or after July 1, 2011.
- Keeps the current benefit accrual rates for all FRS members.
- Keeps the current retiree health insurance subsidy for FRS members.

SB 2100 also establishes the FRS contribution rates effective July 1, 2011. SB 2100 passed the Legislature. ([Conn](#))

Pain Management Clinics (Support)

by Source

[CS/CS/HB 7095](#) ([Schenck](#) and [Health & Human Services Committee](#)) prescribes medical standards and operational restrictions for pain-management clinics and requires more stringent permitting regulations for community pharmacies to be conformed under the new standard by July 2012. The bill provides that a pain-management clinic may be declared a public nuisance if the clinic has been the site of multiple criminal incidences within six months. Criminal penalties will be imposed on doctors that overprescribe narcotics and violate medical standards of care. CS/CS/HB 7095 passed the Legislature. ([Pratt](#))

Mobile Home Park Lot Tenancies (Oppose)

by Source

[CS/SB 650](#) ([Jones](#)) requires local governments to cite the appropriate violator for ordinance violations that take place in mobile home parks. The bill also prohibits local governments from bringing liens, penalties, fines, or other administrative or civil proceedings against a party if the violation is not the party's responsibility. CS/SB 650 passed the Legislature. ([Pratt](#))

Major Bills That Failed - General Government

Immigration

by Source

[CS/SB 2040](#) ([Alexander](#)) would have required publicly funded job boards to check applicants' immigration status, ask state and local agencies to determine the legality of people seeking public benefits, and require law enforcement to make "reasonable efforts" to verify the immigration status of anyone who has been arrested and is in police custody. In addition, the bill contained provisions allowing for non-violent, illegal aliens to serve shortened prison sentences before being deported. The bill did not include any requirements for businesses or public agencies to use the E-Verify program. CS/SB 2040 passed the Senate on May 4 and died in House messages. ([Cook](#))

Highway Safety and Motor Vehicles (Oppose)

by Source

[CS/CS/CS/HB 1353](#) ([Albritton](#)) was amended to include provisions requiring local governments to fund studies and gain Department of Transportation approval to place red light cameras at dangerous intersections. The bill was also amended to prohibit local governments from issuing red light camera tickets for right-on-red violation, but this provision was removed by the Senate. CS/CS/CS/HB 1353 died in Senate messages. ([Cook](#))

Red Light Cameras (Oppose – Preemption)

by Source

[CS/HB 4087](#) ([Corcoran](#)) and [SB 672](#) ([Garcia](#)) would have repealed laws passed during the 2010 legislative session that authorize the use of traffic infraction detectors. CS/HB 4087 passed the House and died in Senate messages. SB 672 died in committee. ([Cook](#))

Major Bills That Failed - Transportation

Department of Highway Safety and Motor Vehicles (DHSMV)

by Source

[CS/CS/CS/HB 1353](#) ([Albritton](#)) was the comprehensive DHSMV legislative package. The bill included language that would have required local governments to pay for a professional safety hazard study to be completed before the installation of a traffic infraction detector or red light camera. This language also stated that local governments may not issue tickets for right-on-red violations. The bill died on special order calendar. ([Matthews](#))

Department of Transportation (Oppose)

by Source

[CS/CS/CS/HB 1363](#) ([Brandes](#)) was the Department of Transportation legislative package. The bill included provisions adding sheriffs as a class of individuals who receive a portion of the local gas option tax. The bill also included provisions which specify that stop lights must have a green, yellow and red indication light. The bill mandated mandatory yellow light timing requirements. The bill provided that drivers of motor vehicles must transport children who are less than seven years of age and less than 4 feet 9 inches in a restraining device. That device may have included a vehicle manufacturer's integrated child seat, a separate child safety seat or a child booster seat. The bill died on special order calendar. ([Matthews](#))

CARLTON FIELDS

ATTORNEYS AT LAW

Nancy Linnan
(850) 513-3611 - direct
nlinnan@carltonfields.com

Darrin Taylor
(850) 425-3398 - direct
dtaylor@carltonfields.com

215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301-1866
P.O. Drawer 190
Tallahassee, Florida 32302-0190

850.224.1585
850.222.0398 fax
www.carltonfields.com

2011 CHANGES TO 163 AND 380 (HB 7207)

Topic	HB 7207
Repeal of 9J-5	Portions of 9J-5 are incorporated into statutes including certain definitions, data and analysis requirements and sections from various elements. Rule 9J-5 is repealed. 9J-11.023 is also repealed
Comprehensive Plan Amendment Process 180 day deadline for adoption 1. Expedited Review 2. Current Review Process 3. Small Scale Amendments	Streamlined and re-written. Local Governments required to adopt plan amendments within 180 days after receiving agency comments or the amendment is withdrawn unless extended with concurrence from DCA and any commenting third party. DRI amendments exempt from 180-day requirement. New standard process for amendments set out in this outline (Called State Coordinated Review in bill) Retained for EAR Based Amendments, Sector Plans, Areas of Critical State Concern (ACSC), Rural Land Stewardship Areas and a newly adopted comprehensive plan for a new local government Approval process remains the same but requirements modified to remove density cap, allow text amendments that are directly related to a plan amendment like notes on the maps. Deletes prohibitions on using small scale amendment process such as if same property granted change in last 12 months and if the same owner has property within 200 feet and was granted change in past 12 months.
Role of Agencies in review of plan amendments	Comments from agencies on plan amendments limited to adverse impacts on important state resources and facilities (for state agencies) and regional resources and facilities (for RPCs). However, DCA has expanded comment authority under State Coordinated Review Process only.

	<p>FDOT – Limited to issues within the agency’s jurisdiction as it relates to the requirements of this part and may include technical guidance.</p> <p>DCA (State Land Planning Agency or whatever form DCA takes) – For Expedited Review, DCA limited to important state resources and facilities outside the jurisdiction of other agencies and directs DCA to balance objectives of amendment against potential adverse impacts to important state resources and facilities. For State Coordinated Process, DCA issues ORC report and makes a compliance finding similar to current process.</p> <p>DEP – Limited to air and water pollution, solid waste, sewage, drinking water, state parks, greenways and trails, state-owned lands and conservation easements, wetlands and other surface waterbodies and Everglades Restoration.</p> <p>FFWCC – Limited to fish and wildlife habitat, listed species and their habitat</p> <p>WMD – Limited to wellfields, regional water supply plan, wetlands and other surface waterbodies, flood protection and floodplain management.</p> <p>RPC – Limited to adverse effects on regional resources or facilities in the SRPP and extrajurisdictional impacts inconsistent with comprehensive plan of any affected local governments in the region (latter current law).</p>
Definition of Urban Service Area	Amends definition of urban service area deleting term “built up,” adding that the urban service area must be adopted in the comprehensive plan and replacing facilities in “the first 3 years of the capital improvements schedule” with “identified in the capital improvements element”. Also adds phrase “Urban Service Area includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation.”
<p>Compliance Finding and Challenges</p> <p>State Comprehensive Plan and 9J-5</p> <p>DCA Review of Adopted Amendment and Challenge Authority</p>	<p>Both removed from having a compliance determination made based on them.</p> <p>Under State Coordinated Process, DCA issues ORC report and Notice of Intent and conducts compliance review. DCA is not limited on comments and may challenge on compliance issues as well as impacts to important state resources or facilities.</p> <p>For Expedited Review Amendment, DCA may comment and challenge only if important state resources or facilities impacted.</p>

State Coordinated Review of Amendments	<p>Establishes one review process for coordinated and expedited amendments.</p> <p>3rd party may challenge an amendment. Local government determination is sustained if fairly debatable. DCA can not intervene in a citizen initiated petition.</p> <p>DCA may challenge an amendment. If DCA chooses to challenge it must do so within 45 days of determining the amendment is complete. For DCA challenge, the local government's determination of in compliance is presumed to be correct and sustained if shown by a preponderance of the evidence. (same as regular process now)</p> <p>Local government determination of internal consistency shall be sustained if fairly debatable.</p> <p>If ALJ finds not in compliance, Recommended Order (RO) submitted to the Administration Commission. If ALJ finds in compliance, RO submitted to DCA. DCA will issue the RO unless it finds the amendment not in compliance. Then, DCA shall refer the amendment to the Administration Commission.</p>
Expedited Review of Amendments	<p>DCA has 30 days from determining the amendment package is complete to challenge the amendment. DCA challenge under an expedited amendment is limited to the comments provided by the review agencies and a determination by the DCA that an important state resource or facility will be adversely impacted.</p> <p>The local government may challenge the DCA determination that an important state resource or facility will be impacted. The DCA determination must be supported with clear and convincing evidence.</p>
Third Party challenges to Expedited Review	<p>3rd party may challenge whether an amendment is in compliance. The local government determination will be sustained if fairly debatable. DCA cannot intervene in a citizen initiated petition.</p>
Transition	<p>DCA has 60 days after the effective date of this Act to review all pending administrative and judicial proceedings to determine if they are consistent with 163. Once a determination has been made, DCA has 30 days to file amended petition. If nothing filed within that timeframe, then case is dismissed.</p>
<p>Future Land Use</p> <p>Need</p> <p>Future Land Use amendment</p>	<p>Local government must provide minimum (as opposed to a maximum) amount needed for land uses based on BEBR mid range for a 10 year planning period. However, need must be more than just population projections and must provide adequate supply for real estate market. Does not apply to Areas of Critical State Concern.</p> <p>Clarifies plan amendment analysis requirements.</p>

analysis	
Urban Sprawl	Adds definition of urban sprawl, incorporates the 13 indicators of urban sprawl and adds new test for sprawl: plan amendment must meet 4 of 8 new criteria to be determined to not generate urban sprawl.
Planning Timeframe	Allows timeframes beyond the planning timeframe for projects and specific components of plan.
New Towns and Transit Oriented Developments (TOD)	Adds definitions
Antiquated Subdivisions	Adds requirement for future land use map to be based upon the need to modify land uses and development patterns in antiquated subdivisions. Antiquated subdivisions are defined as a subdivision approved more than 20 years ago that has substantially failed to be built and its buildout would cause an imbalance of land uses and detrimental to the local and regional economies and development patterns.
Public Facilities/Capital Improvements Schedule	<p>Deletes financial feasibility requirement.</p> <p>Permits Capital Improvements Schedule to be adopted through local ordinance, not a plan amendment.</p> <p>Modifies definition of public facilities to delete health systems and spoil disposal sites.</p>
Concurrency / Transportation	<p>Removes state mandated concurrency for transportation, parks and recreation and schools. All are optional for the local governments.</p> <p>Deletes concurrency exemptions.</p> <p>Removes state requirement to adopt mobility strategies to support and fund mobility and criteria for mobility plan.</p> <p>Replaces term “backlog” with “deficient.”</p> <p>If locals want to have home rule concurrency management, must allow proportionate share pay and go.</p> <p>Refines proportionate share language to simplify the proportionate share calculation; removes cost of deficiencies caused by prior approved projects and toll roads from calculations; specifies that once an impact is mitigated, it can not be charged again; provides for a credit for a proportionate share payment and specifies that local governments are not required to approve a development that is not otherwise qualified for approval.</p>

	<p>FDOT directed to develop and submit a study to the Legislature by 12/15 of this year on recommended changes or alternatives to the calculation of proportionate share contribution with local government and developer participation.</p>
School Planning	<p>Makes school concurrency optional.</p> <p>Removes requirement for public school facilities element.</p> <p>Removes many of the requirements related to school concurrency and interlocal agreement with school boards.</p> <p>Removes prohibition on adopting plan amendments for not addressing school siting requirements.</p> <p>Permits portables to be counted as supply for classrooms; currently, counting limited to 3 years.</p> <p>Removes requirement for collocation of parks and schools; up to local government.</p>
Sector Planning	<p>Removes pilot program and limitations on number of sector plans and establishes 15,000 acres as minimum size for sector plan.</p> <p>Makes scoping meeting an option for local government.</p> <p>Modifies submittal requirements – Only general information required at conceptual phase with detailed information deferred to detailed plan.</p> <p>Requires no demonstration of need and removes limitation to planning timeframe.</p> <p>Directs detailed map (DSAP) to be adopted by local development order – not plan amendment.</p> <p>Adds to requirements of DSAP identification of maximum and minimum densities and intensities and identification of water resource development and water supply.</p> <p>Requires consistency of conceptual plan with state and regional plans.</p> <p>Allows DCA to enter into an agreement with a local government for a large area comprehensive plan amendment consisting of at least 15,000 acres adopted on or before July 1st in order to apply the sector plan provisions.</p> <p>Requires that conservation easements are recorded and effective by the effective date of the development approvals within the sector plan</p>

	area.
Rural Land Stewardship Areas	<p>Removes requirement for an agreement with DCA.</p> <p>Allows one or more land owners to apply for RLSA in a local government and allows RLSA to include more than one county.</p> <p>Creates RLSA overlay zoning district by local ordinance.</p> <p>Replaces term “transferable rural land use credits” with “stewardship credits.”</p> <p>Deletes reference to minimum 25 year timeframe for receiving areas. Replace with provision that receiving areas based on available data and development potential represented by stewardship credits created in RLSA.</p> <p>Recognizes Collier County’s RLSA as a RLSA under the statute.</p> <p>Clarifies that landowners must consent to being in a RLSA; population based upon need is not required; and requires conservation easements to be in a place prior to receipt of stewardship credits being transferred.</p>
Evaluation and Appraisal Report Process Streamlined	<p>Requires local government to analyze plan every 7 years and determine if amendments required to address changes in state law or any other revision. Does not change timing for when EAR would be due, thus, 7 years from last EAR.</p> <p>Authorizes DCA to adopt a schedule for EAR submittal through rule making.</p> <p>Requires local government to send a letter to state land planning agency summarizing their findings.</p> <p>Local government one year to adopt EAR amendments.</p> <p>Restricts local government from amending its plan if review letter or EAR amendment is not submitted as required.</p> <p>Clarifies that all EARs and EAR Amendments must meet the new requirements in this bill even those that are due or overdue.</p>
Developments of Regional Impact	<p>Retains DRI exemption for properties within a designated DULA.</p> <p>Provides for 4 year extension of DRI build out, phasing and commencement dates and associated mitigation if requested by the developer for valid DRIs. Request must be made by 12/31/11. However, mitigation not extended if a development has commenced construction of phase to be mitigated and local government notifies developer by 12/1/11 that has let contract for mitigation required for</p>

	<p>that phase.</p> <p>Clarifies that the 180-day adoption date for plan amendments does not apply to DRIs.</p> <p>New thresholds in bill automatically apply for projects and trump any comprehensive plan requirements or agreements that would apply a stricter DRI threshold or require a DRI if now exempt.</p> <p>Adds an exemption from DRI review for solid mineral mining, industrial, hotel/motel and movie theaters. Clarifies that Spaceport launch facilities are industrial and thus, are exempt from DRI review.</p> <p>Adds requirement that DRI exemption for new solid mineral mining applies only if a mine owner enters into a binding agreement with FDOT to mitigate for any impacts to the Strategic Intermodal System (SIS)</p> <p>Increases the essentially built out criteria from 20% to 40%</p> <p>Increases substantial deviation criteria for attraction or recreation facilities, office and commercial.</p> <p>Amends aggregation criteria to remove voluntary sharing of infrastructure criterion and requires 3 of remaining criteria must be met to determine there is a unified plan of development.</p> <p>A local government may deny a NOPC for local reasons including if the change is not compatible with a plat restriction</p> <p>If the proportionate share formula changes, a DRI with transportation mitigation requirements under the old formula may request a local government modification. If local government agrees, the revision is presumed not to be a substantial deviation.</p>
<p>Dense Urban Land Areas (DULA)</p>	<p>Eliminates Dense Urban Land Areas in Ch. 163.</p> <p>Retains DRI exemption for local governments designated as Dense Urban Land Areas and requirements for DULAs under Ch. 380</p> <p>Protects DULA designation for local governments that meet the criteria. Any communities designated as a DULA will remain a DULA.</p> <p>If more than 85% of the total area of a DRI is in a DULA and the rest is not, then the entire DRI may be rescinded in both the DULA and non-DULA local governments if the portion of the development outside of the DULA does not independently meet the DRI thresholds.</p>

	Any area that has been identified as a DULA may not be removed from qualifying list. However, the DRI exemption only applies to the portion of the DULA that meets the criteria.
Permit and Development Order Extensions	<p>Provides a two year permit extension for those that received a permit extension under SB 360 (2009 2-year extension) if those permits were ineligible for extension under SB1752 (2010 2-year extension) because the permits expired after 1/1/12. The extension is not automatic and must be requested by the permit holder by 12/31/11.</p> <p>Also provides a two year extension if the permit or DO expires between 1/1/12 and 1/1/14. The permit holder must request the extension by 12/31/11.</p> <p>Caps all 2-year extensions granted since 2009 through this Act at a total of 4 years.</p>
Impact Fees	Provides a credit for impact fees under proportionate share.
Updates Ch.163	Reduces the size of Ch. 163 by removing sections that are not needed, have already been implemented, are rarely used or covered elsewhere in the statute.
Agricultural Enclaves	Plan amendments for agricultural enclaves are presumed to not be urban sprawl.
Rural Agricultural Industrial Area	Clarifies that this type of amendment is presumed to not be urban sprawl and the amendment must be considered by the local government within 90 days after the state land planning agency review is completed.
Climate Change – Adaptation	Defines the Adaptation Area and permits a local government with a Coastal Management Element to include an Adaptation area and plan for impacts from sea level rise.
Century Commission	Retained but scheduled for sunset on June 30, 2013.
Property Rights	Conforms intent language for growth management programs to inordinate burden language in property rights bill
Plan Amendments subject to Voter Referendum	Clarifies that a comprehensive plan amendment adopted under the expedited review process prior to this act becoming effective that was subject to voter referendum by local charter and found in compliance, may be readopted by ordinance and shall become effective upon approval by the local government and can not be challenged under the provisions of s.163 (St. Pete Beach)
Other Changes	
Local Referendums	Prohibits land use amendments requiring referendums.

Duplication of Permitting	Does not require local governments to duplicate or exceed a permitting program when a federal, state or regional agency has implemented a permitting program.
Annexations	Provides for joint agreements for municipal adoption of plan or plan amendments in advance of an annexation.
Military Base Compatibility	Any local government that amended its comprehensive plan to address military base compatibility requirements and was found in compliance after 2004 is not required to address the requirements adopted in 2010 session until the EAR is due. Also adds provision that comments from the military base commander on plan amendments are not binding on local government.
Administration Commission	Requires unanimous approval of Administration Commission for sanctions to be applied.
Development Agreements	Development agreements extended to 30 years and may be extended further by amendments.
DCA guidance on website	DCA must provide guidance on website for submittal and adoption of plans, plan amendments and land development regulations. These are not rules and are exempt from 120.54(1)(a)
Severability Clause	Contained in the bill
Effective Date	Upon Becoming Law
Deletions from 163	Provisions added under HB 697 (energy efficiency requirements in planning) Reference to affordable housing needs assessment. Community visioning provisions.