

**2011 Legislative Session Wrap-up
For Lee County**

Status of Specialty Issues In Our Portfolio

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Status of Specialty Issues In Our Portfolio

Issues that Passed

- Growth Management
- Platted Lands
- Local Regulations of Fertilizer Restrictions
- Pension Reform
- Impact Fee Restrictions

Issues that Did Not Pass

- Mining Preemption
- Onsite Septic Tank Inspection
- Online Travel Companies Tax Exemption
- Special District Reform
- Pretrial Detention Preemption
- Local TABOR
- Renewable Energy
- Communications Services Tax Rate Reduction

State Mandates and Preemptions That Passed

- Fertilizer Regulation Preemption
- Firearm Regulation Preemption
- Bonus and Severance Pay
- Security Camera Regulation Restrictions
- Vacation Rentals Regulation Restrictions
- Bert Harris Act Revision

Appropriations

Next Session begins January 10, 2012

- Lee County Delegation Meeting Week of November 7th
- Interim Committee Meetings in Each Month of September through December

Seven Constitutional Amendments Proposed by the Legislature for 2012 Ballot

- Abortion Funding
- Disabled Veteran Homestead Exemption
- Health Care
- Judiciary
- Property Tax
- State and Religion
- State Revenue Limitation

Issues That Passed

1. Growth Management. Chapter 2011-139, Laws of Florida (HB 7207), repeals much of the structure and process of growth management in its 349 pages. The major provisions include:

- Repeals the requirement that the capital improvements element be financially feasible and the requirement that it be reviewed by DCA annually. Page 43-44.
- Repeals mandatory concurrency requirements for transportation, public school facilities, recreation and open space, The bill retains concurrency requirements for sanitary sewer, drainage, potable water, and solid waste disposal. Page 121. The bill includes restrictions on optional concurrency requirements, including a limitation that the adopted levels of service standards in such a concurrency system can be met. Page 122. Local governments implementing transportation concurrency must follow specific requirements included in the legislation, including proportionate share requirements for developments of regional impact. Page 127.
- Limits review and challenge of a comprehensive plan amendment by an affected person or a reviewing agency. Pages 187-197.
- Requires local governments to consider a zoning request concurrent with a comprehensive plan amendment at the request of an applicant. Line 5703.
- Requires local governments to review and evaluate and update their comprehensive plans every seven years, but does not require approval of the Department of Community Affairs.
- Extends DRI permits for four additional years (page 291) and other previously issued permits for an additional two years. Page 343 and 347.
- Exempts proposed and expanding solid mineral mines from development of regional impact review. Page 303.
- Exempts certain dense urban land areas (1,000 people per square mile) from DRI review. Page 305.
- Repeals Rule 9J5 in its entirety. Page 343.

- Requires the local government coordination element address through coordination mechanisms the impact of development upon development in adjacent areas and the State. Line 2060-2072. It further requires coordination in establishing levels of service. The legislation does not establish the strength and enforcement of the coordination element. Apparently, that will be left to the local governments to establish.
- Takes effect upon becoming a law.

2. Department of Community Affairs Powers Curtailed and Transferred. SB 2156 transfers the DCA's Division of Community Planning and the Division of Housing and Community Development to a newly created Department of Economic Opportunity. The bill takes effect on July 1, 2011. (This bill has not yet been presented to the Governor.)

3. Platted Lands. Chapter 2011-139, Laws of Florida (HB 7207), makes two changes specifically designed to assist communities such as Lee County address problems with assemblage of land in antiquated subdivisions. The bill includes a new requirement for local governments to address antiquated subdivisions in the future land use element of a comprehensive plan. It requires the element to include "the need to modify land uses and development patterns within antiquated subdivisions." Page 49. The bill also revises requirements for calculating "population" that local governments must consider in developing the comprehensive plan and land use element. The new population requirement directs the plan be based upon permanent and seasonal population estimates and projects which may be either those provided by the University of Florida's Bureau of Economic and Business Research ("BEBR") or those generated locally. The bill also directs that the plan be based at least on the minimum amount of land required to accommodate the medium BEBR projected populations over the next ten year. This provision allows the County discretion to use a larger population projection or a population projected over a longer period of time, if it desires. The bill takes effect upon becoming a law.

4. Impact Fee Restrictions. SB 410 reenacts the burden of proof requirements adopted in 2009 that have been challenged by Lee County and the Association of Counties, the League of Cities, the School Board Association and several other local governments. The bill provides that in considering challenges to impact fees, courts may not provide a deferential standard to the local government determinations and must put the burden of proof on local governments to prove that the impact fee meets the state law requirements for a valid fee. The bill takes effect upon becoming a law, but operates retroactively to July 1, 2009. (This bill has not yet been presented to the Governor.)

5. Restrictions on Local Regulations of Fertilizer. HB 7215 preempts local governments in the area of fertilizer regulation. The regulation of the sale, composition, and formulation, including nutrient content, is preempted to the state. Page 41. However, a local government ordinance adopted before July 1, 2011 is exempt from the preemption and may be enforced. Apparently, if the ordinance is amended in the future, the preemption language may apply, though the legislation is silent on this point. The bill takes effect July 1, 2011. (This bill has not yet been presented to the Governor.)

6. Pension Reform. Chapter 2011-68, Laws of Florida (SB 2100), provides for local government employees who are members of the Florida Retirement System ("FRS") to begin contributing three percent of their salary to the FRS. The County's contribution to FRS will be reduced by three percent, so that the County will no longer have to pay 100 percent of the FRS costs, but will now pay only 97 percent. The legislation takes effect July 1, 2011. This early effective date means that the County will experience a reduction in personnel costs associated with FRS contributions this current County fiscal year.

Issues that Did Not Pass

1. Mining Preemption. Lee County government and its residents have expended two years and \$2 million in developing and adopting a mining policy and ordinance. It was alarming when, two weeks before the end of Session, a House committee adopted a strike-everything amendment to a 70 page environmental bill, HB 991. The amendment included a preemption of mining regulation to the state. We alerted the County Commissioners and staff, as well as the members of the legislative delegation. Commissioner Mann traveled to Tallahassee and spoke with every member of the delegation. Thereafter, the delegation members convinced the sponsor of the bill, Rep. Jimmy Patronis (R-Panama City), to delete the mining preemption provision from the legislation. Later, near the end of Session, the mining preemption appeared again as a proposed amendment to SB 768, which was up for consideration by the full Senate. We once more warned the County Commission and the members of the delegation. The provision was again dropped. And the Session adjourned sine die without the mining preemption passing either chamber.

2. Onsite Septic Tank Inspection. Chapter 2011-47, Laws of Florida (SB 2002), provides for the Legislative Budget Commission to determine whether the septic tank inspection program from 2010 shall be implemented. The exact language from the legislation is printed below.

A question has been raised as to whether last year's septic tank bill, SB 550 from 2010, would prohibit a local government from exercising its home rule power to conduct septic tank inspections. Last year's bill did not include any preemption language, leading to a preliminary conclusion that Lee County may well have the home rule power to develop its own program. Prior to embarking on the development of such a program, however, it would be wise to conduct a thorough legal analysis.

SB 2002, the 2011 implementing bill septic tank provision:

Section 13. In order to implement Specific Appropriations 459 through 469 of the 2011-2012 General Appropriations Act, before the implementation of the onsite sewage treatment and disposal system evaluation program described in s. 381.0065(5)(a), Florida Statutes, the Department of Health shall submit a plan for approval by the Legislative Budget Commission which includes an estimate of agency workload and funding needs. The department may not expend funds in furtherance of the evaluation program before the plan is approved by the commission.

3. Online Travel Companies Tax Exemption. The online travel company industry vigorously pushed its tax exemption legislation. In the Senate, SB 376 was sponsored by Senator Gaetz (R-Destin), who is scheduled to be the next Senate President. In the House, HB 493 was sponsored by a rookie, Representative Jason Brodeur (R-Sanford). The industry allied with its national affiliate and with Disney, which has its own tax exemption already in statutes for travel packages. Against the bill were county governments which have filed various types of litigation in state and federal courts contesting the online company policy of not remitting the state and local taxes on the retail amount paid by customers. Allied with the counties were Marriott, the American Hotel and Lodging Association (a national affiliate), and the convention & visitors bureaus from around the state. As filed, the bill exempted the online companies from paying the tax on the retail amount paid by the customer and from disclosing the tax on the wholesale amount paid to the hotel. All other taxes in Florida must be separately stated on the customer's bill. After intense opposition, the bill was amended to require the online companies to separately state the tax on the customer's final bill, which apparently is on the credit card statement received by the customer as part of its monthly bill. Other than that single amendment, the sponsors refused to entertain any revisions.

The bill passed the House 77 to 38, three votes shy of the constitutional required 80 affirmative votes necessary for a legislative mandate reducing the authority of county governments to raise revenue. The Senate bill had a tough time in committees, passing the Community Affairs Committee five to two and the Finance & Tax Subcommittee four to three. During the last week of Session, it was withdrawn from the Budget and the Rules committees and placed on special order calendar. Because of opposition from a significant number of Senators, the bill was never considered by the full Senate.

4. Special District Reform. The House Finance and Tax Committee discussed the issue of special districts at several of its meetings, but never filed a bill on the subject. The Senate considered a bill that would have required local governments to study certain special districts, but the bill was never voted on by the committee.

5. Pretrial Detention Preemption. Legislation was filed and pushed hard by the bail bond industry to preempt counties from initiating or continuing jail diversion programs for people arrested for crimes. The Senate bill was sponsored by Senator Bogdanoff (R-West Palm Beach), who also chairs the Senate Finance & Tax Subcommittee. The House sponsor is Representative Dorworth (R-Lake Mary), who is scheduled to be Speaker in 2015-2016. The Senate sponsor could not get SB 372 out of committee, so she filed it as a last minute amendment in another committee to an unrelated bill on the judiciary, SB 1398. When the House sponsor tried the same thing on the House floor, the Rules Chair was consulted on the lack of germanity of the amendment and ultimately, the House sponsor was unable to move the pretrial preemption bill on the House floor.

A strong coalition of government officials opposed the bill through-out the process, including judges, state attorneys, public defenders, sheriffs, and county governments. Lee County staff and the circuit court judges were very helpful in educating our delegation members about this issue.

6. Local TABOR. Both chambers considered restricting county and city revenues but ultimately decided not to do that directly. The Senate President vowed early in the session not to include local governments in the state revenue restriction measure that is a constitutional amendment that will appear on the November 2012 ballot (HJR 958). The House contemplated proposing an aggregate millage cap for local governments, but that too did not gain steam. Instead, the House pushed another round of property tax cuts to the tax base, in the form of HJR 381 which will appear on the November 2012 ballot. See the text on page 10.

7. Renewable Energy. The House and Senate failed to adopt comprehensive renewable energy legislation. They did, however, pass an amendment to the energy economic zone pilot program in section 377.809, Florida Statutes. Currently, two counties have designated energy economic zone pilots, one of them in Sarasota County. HB 879 authorizes tax exemptions and other incentives in both zones, up to a maximum of \$300,000 in state tax incentives in each zone. (This bill passed, but has not yet been presented to the Governor).

8. Communications Services Tax ("CST") Rate Reduction. The telecommunications industry pushed a rate cap reduction proposal during the Session. Currently, the CST rate for charter counties and municipalities are capped at 5.22 percent. The legislation would have reduced the cap to four percent for charter counties and municipalities. CST legislation passed, but it did not contain the rate cap provision.

State Mandates and Preemptions That Passed

1. Fertilizer Regulation Preemption. See, discussion on page 4.

2. Firearm Regulation Preemption. Chapter 2011-109, Laws of Florida (HB 45), preempts the regulation of firearms and ammunition to the state, except as otherwise provided in the Florida Constitution, which authorizes counties to require a three to five day waiting period for the purchase of firearms by people who do not currently hold a concealed weapons permit. The legislation establishes penalties for elected and appointed officials violating the preemption, including a penalty of up to \$5,000. The bill takes effect on October 1, 2011.

3. Bonus and Severance Pay Restrictions. SB 88 proscribes bonus and severance pay for local officials. The legislation requires bonus pay plans include performance standards and an evaluation process, and describes the process that must be followed. The bill also limits severance pay to no more than 20 weeks of compensation, and prohibits severance when the employee has been fired. The legislation also prohibits local governments limiting officials from discussing bonus or severance agreements. The bill takes effect July 1, 2011. (This bill has not yet been presented to the Governor.)

4. Security Camera Regulation Restrictions. Chapter 2011-8, Laws of Florida (HB 93) reenacts provisions in SB 360 (2009) that prohibited local governments from requiring a business to expend funds to enhance the services or functions provided by local government unless specifically provided by general law. The thrust of this bill is to prohibit local governments from requiring businesses to operate security cameras as additional security provided by local governments. The bill takes effect upon becoming law and applies retroactively to June 1, 2009.

5. Vacation Rentals Regulation Restrictions. HB 883 prohibits local governments from regulating or prohibiting vacation rentals from other residential property based on their classification, use or occupancy. The bill grandfathers local ordinance adopted before June 1, 2011. (This bill has not yet been presented to the Governor.)

6. Bert Harris Act Revision. HB 701 revises some of the time periods and effects of local government ordinance adoption and implementation in the Bert Harris Act provisions of the Florida Statutes. (This bill has not yet been presented to the Governor.)

Appropriations

The Governor vetoed \$2.5 million in funding for the Regional Planning Councils.

Next Session Begins January 10, 2012.

Redistricting for Congress, Florida House and Senate

Budget picture still bleak

Lee County Delegation meeting tentatively scheduled for week of November 7th

Interim Committee weeks are scheduled as follows:

September 19th

October 3rd

October 17th

October 31st

November 14th

December 5th

Seven Constitutional Amendments Proposed by the Legislature for 2012 Ballot

1. SJR 2. Health Care.

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 28

HEALTH CARE SERVICES. Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person or employer to purchase, obtain, or otherwise provide for health care coverage; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and taxes for paying directly or accepting direct payment for lawful health care services; and prohibit laws or rules from abolishing the private market for health care coverage of any lawful health care service. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be construed to prohibit negotiated provisions in insurance contracts, network agreements, or other provider agreements contractually limiting copayments, coinsurance, deductibles, or other patient charges.

2. HJR 381. Property Tax.

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTIONS 4, 6
ARTICLE XII, SECTIONS 27, 32, 33

PROPERTY TAX LIMITATIONS; PROPERTY VALUE
DECLINE; REDUCTION FOR NONHOMESTEAD
ASSESSMENT INCREASES; DELAY OF SCHEDULED
REPEAL.-

(1) This would amend Florida Constitution Article VII, Section 4 (Taxation; assessments) and Section 6 (Homestead exemptions). It also would amend Article XII, Section 27, and add Sections 32 and 33, relating to the Schedule for the amendments.

(2) In certain circumstances, the law requires the assessed value of homestead and specified nonhomestead property to increase when the just value of the property decreases. Therefore, this amendment provides that the Legislature may, by general law, provide that the assessment of homestead and specified nonhomestead property may not increase if the just value of that property is less than the just value of the property on the preceding January 1, subject to any adjustment in the assessed value due to changes, additions, reductions, or improvements to such property which are assessed as provided for by general law. This amendment takes effect upon approval by the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, shall take effect January 1, 2013.

(3) This amendment reduces from 10 percent to 5 percent the limitation on annual changes in assessments of nonhomestead real property. This amendment takes effect upon approval of the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013.

(4) This amendment also authorizes general law to provide, subject to conditions specified in such law, an additional homestead exemption to every person who establishes the right to receive the homestead exemption provided in the Florida Constitution within 1 year after purchasing the homestead property and who has not owned property in the previous 3 calendar years to which the Florida homestead exemption applied. The additional homestead exemption shall apply to all levies except school district levies. The additional exemption is an amount equal to 50 percent of the homestead property's just value on January 1 of the year the homestead is established. The additional homestead exemption may not exceed an amount equal to the median just value of all homestead property within the county where the property at issue is located for the calendar year immediately preceding January 1 of the year the homestead is established. The additional exemption shall apply for the shorter of 5 years or the year of sale of the property. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under Article VII, Section 4(d), whichever is greater. Not more than one such exemption shall be allowed per homestead property at one time. The additional exemption applies to property purchased on or after January 1, 2011, if approved by the voters at a special election held on the date of the 2012 presidential preference primary, or to property purchased on or after January 1, 2012, if approved by the voters at the 2012 general election. The additional exemption is not available in the sixth and subsequent years after it is first received. The amendment shall take effect upon approval by the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013.

(5) This amendment also delays until 2023, the repeal, currently scheduled to take effect in 2019, of constitutional amendments adopted in 2008 which limit annual assessment increases for specified nonhomestead real property. This amendment delays until 2022 the submission of an amendment proposing the abrogation of such repeal to the voters.

3. SJR 592. Disabled Veteran Homestead Exemption.

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTION 6
ARTICLE XII, SECTION 32

VETERANS DISABLED DUE TO COMBAT INJURY;
HOMESTEAD PROPERTY TAX DISCOUNT. Proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the property discount on the homesteads of veterans who became disabled as the result of a combat injury to include those who were not Florida residents when they entered the military and schedule the amendment to take effect January 1, 2013.

4. SJR 958. State Revenue Limitation.

ARTICLE VII, SECTIONS 1 and 19
ARTICLE XII, SECTION 32
CONSTITUTIONAL AMENDMENT

STATE GOVERNMENT REVENUE LIMITATION.
This proposed amendment to the State Constitution replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on inflation and population changes. Under the amendment, state revenues, as defined in the amendment, collected in excess of the revenue limitation must be deposited into the budget stabilization fund until the fund reaches its maximum balance, and thereafter shall be used for the support and maintenance of public schools by reducing the minimum financial effort required from school districts for participation in a state-funded education finance program, or, if the minimum financial effort is no longer required, returned to the taxpayers. The Legislature may increase the state revenue limitation through a bill approved by a super majority vote of each house of the Legislature. The Legislature may also submit a proposed increase in the state revenue limitation to the voters. The Legislature must implement this proposed amendment by general law. The amendment will take effect upon approval by the electors and will first apply to the 2014-2015 state fiscal year.

5. HJR 1179. Abortion Funding.

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 28

PROHIBITION ON PUBLIC FUNDING OF ABORTIONS; CONSTRUCTION OF ABORTION RIGHTS.- This proposed amendment provides that public funds may not be expended for any abortion or for health-benefits coverage that includes coverage of abortion. This prohibition does not apply to an expenditure required by federal law, a case in which a woman suffers from a physical disorder, physical injury, or physical illness that would place her in danger of death unless an abortion is performed, or a case of rape or incest.

This proposed amendment provides that the State Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. With respect to abortion, this proposed amendment overrules court decisions which conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution.

6. HJR 1471. State and Religion.

CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 3

RELIGIOUS FREEDOM.-Proposing an amendment to the State Constitution to provide, consistent with the United States Constitution, that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding, or other support and to delete the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

7. HJR 7111. Judiciary.

CONSTITUTIONAL AMENDMENT
ARTICLE V, SECTIONS 2, 11, AND 12

STATE COURTS.-Proposing a revision to Article V of the State Constitution relating to the judiciary; changing the authority of the Legislature to repeal a court rule by two-thirds vote of the membership of each house to a simple majority of each house; limiting the Supreme Court's ability to readopt a rule repealed by the Legislature; requiring Senate confirmation before a justice may take office; providing that if the Senate does not act within 90 days the nominee is deemed confirmed as a justice; allowing the Senate to meet outside of regular session without having the House of Representatives convene at the same time; deleting outdated references related to the Judicial Qualifications Commission; requiring the Judicial Qualifications Commission to provide the House of Representatives access to records; providing for confidentiality of records provided to the House of Representatives until impeachment is initiated; making conforming and technical changes.

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