

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Tuesday, September 20, 2011
TIME: 8:30 —10:30 a.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1		Presentation by Executive Director Doug Darling relating to the establishment of the new Department of Economic Opportunity.	
2		Presentation by Tom Beck, Director of the Division of Community Planning, Department of Community Affairs, on the implementation of the 2011 Growth Management Legislation.	
3		Interim Project 2012-115 (Insignificant Fiscal Impact) Presentation	



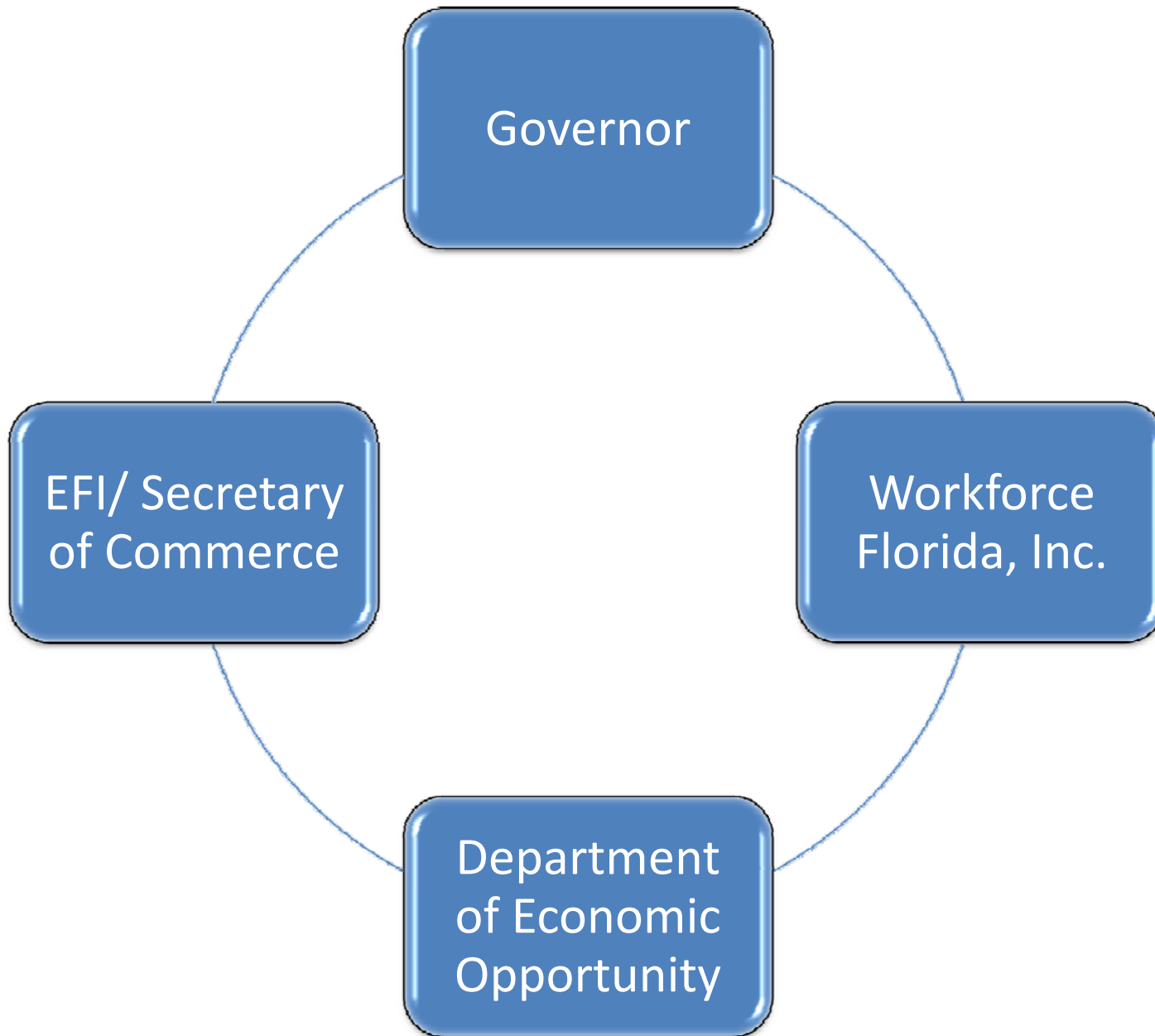
FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY

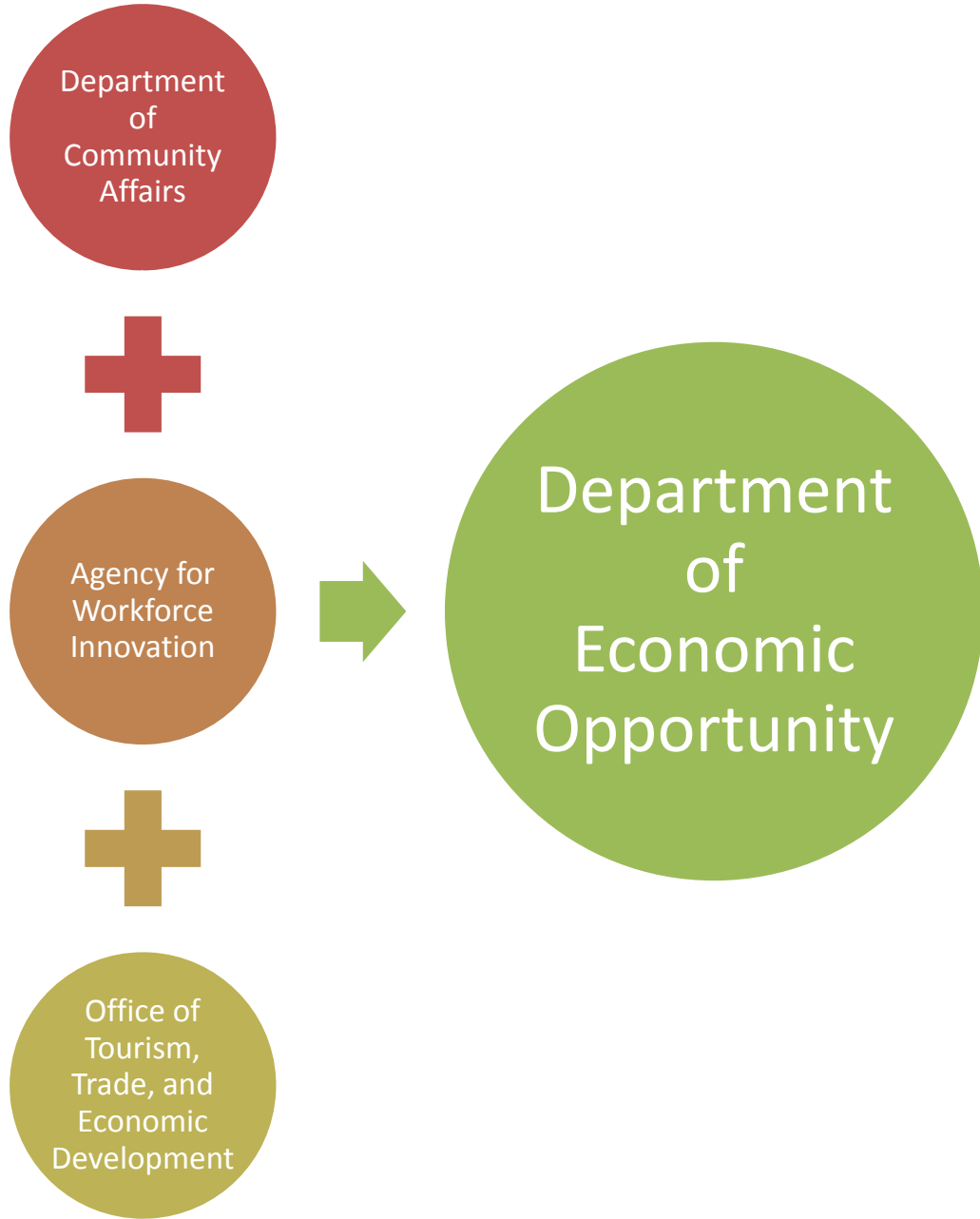
Senate Committee on Community Affairs

Presented by: Doug Darling, Executive Director, Department of Economic Opportunity

Tuesday, September 20, 2011







Department of Economic Opportunity

➤ **Division of Community Development**

- Community Planning/Technical Assistance
- Housing and Community Assistance
- Economic Development
- Assistance for Small Businesses

➤ **Division of Workforce Services**

- Unemployment Compensation
- Workforce Services

➤ **Division of Strategic Business Development**

- Planning, Program Coordination, and Partnership Coordination
- Business Development
- Film Commission



Division of Community Development

- Planning that fosters economic development while protecting important state resources and facilities
- Focus on large scale planning
- Technical assistance for innovative planning and development strategies that promote a diverse economy
- Grants for economic development; rural/urban small business support; assistance for low-income Floridians



Community Planning Act (HB 7207)

Prior to June 1, 2011	Community Planning Act (effective June 2, 2011)
Comprehensive Plan Review – 136 Days	Expedited State Review – 65 Days
Concurrency required for seven (7) types of public facilities	Only sewer, solid waste, water, and stormwater are subject to concurrency; transportation, schools, and parks/recreation concurrency are optional
Small Scale Amendments: Density limitation; maximum acreage per year from 80 to 120 acres; text changes not allowed; must be submitted to Department	Small Scale Amendments: No density limitation; maximum acreage increased to 120 acres for all local governments; text changes permissible; submission no longer required



Community Planning Act (HB 7207)

Prior to June 1, 2011	Community Planning Act (effective June 2, 2011)
Evaluation and Appraisal Reports submitted by local governments every seven (7) years	Evaluation and Appraisal Reports no longer required
Amendments limited to twice per year with some exceptions	Amendments no longer limited to twice per year
Rule 9J-5, F.A.C., consistency required	Rule 9J-5, F.A.C., repealed and portions of the rule incorporated into Statutes
Optional Sector Plan Pilot Program with minimum planning area of 5,000 acres	Pilot status of Optional Sector Plan program removed and minimum planning area increased to 15,000 acres



Division of Strategic Business Development

- **Business Plan - submitted Sept. 1, 2011**
- **Coordination of Strategic Planning**
- **Incentive Review Timelines**
- **More Flexible Decision Making**
- **Account Executives in the Division of Strategic Business Development**



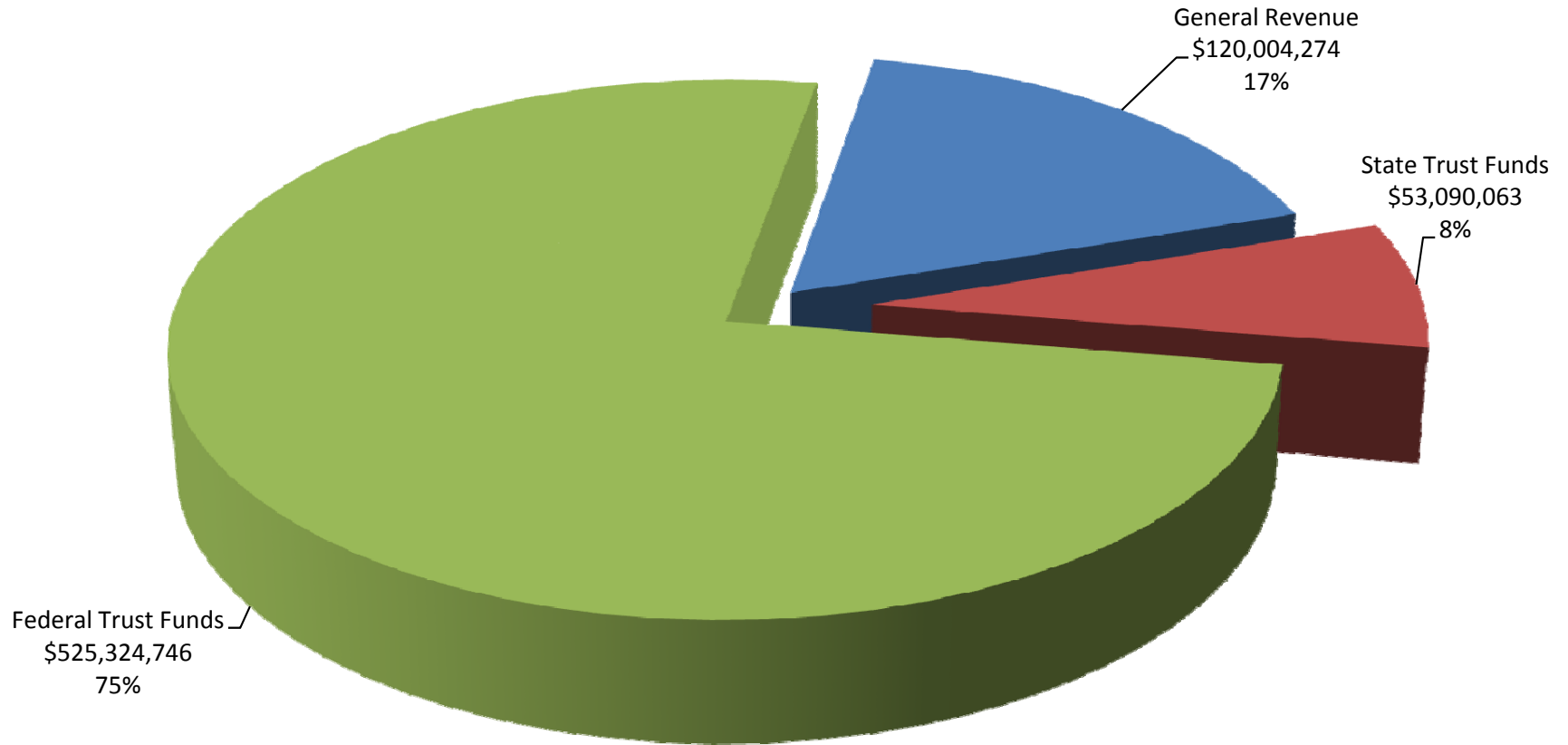
Division of Workforce Services

- **Workforce program development & guidance, oversight, federal performance & financial reporting, technical assistance**
- **Labor market information**
- **Unemployment compensation services**



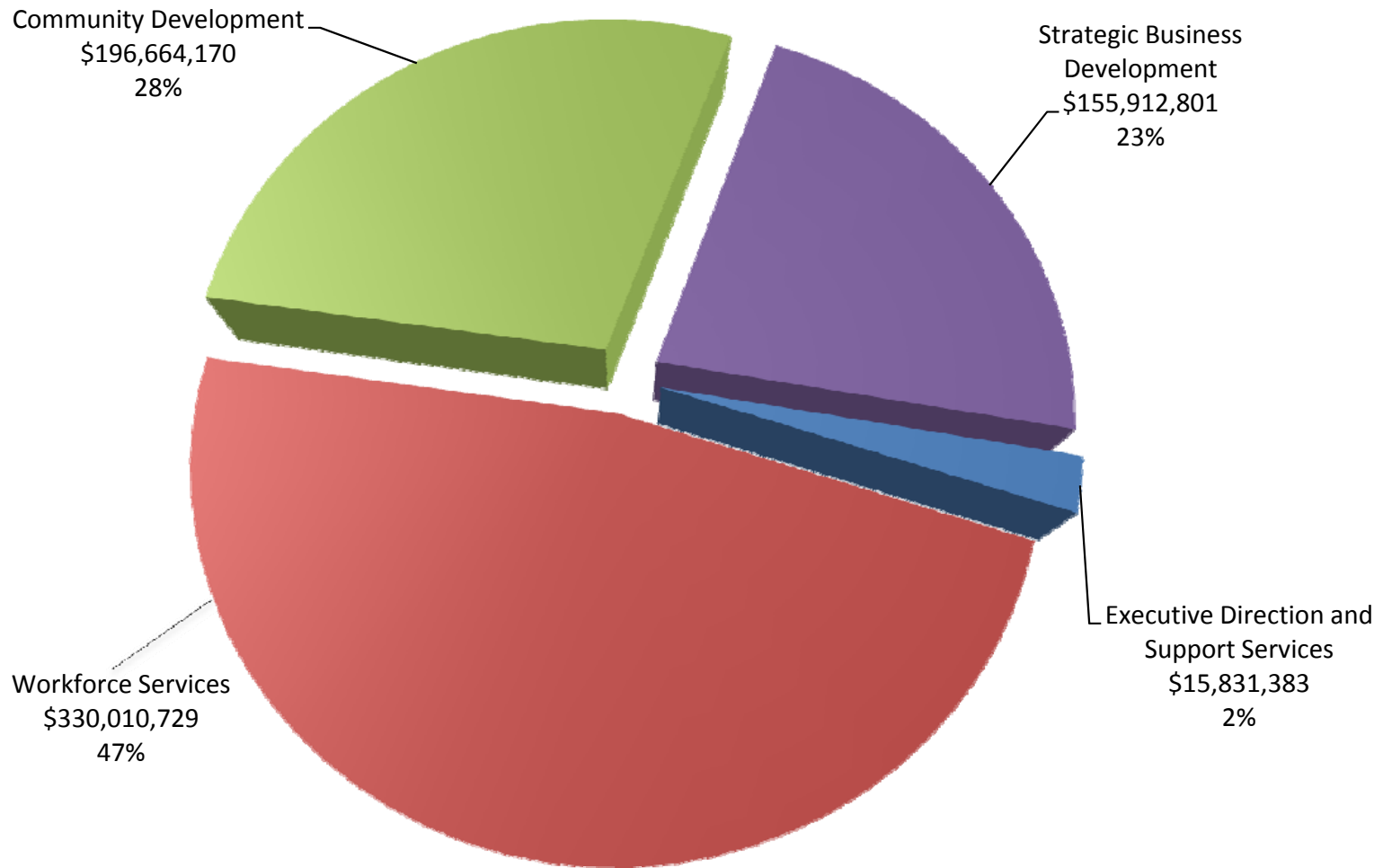
Initial Funding Sources

Partial Year Funding - \$698.4 million (approved by LBC on 9/7/2011)



Initial Operating Budget

Partial Year Funding - \$698.4 million (approved by LBC on 9/7/2011)



Florida Housing Finance Corporation

- **Financial institution created by the Legislature to better access federal housing initiatives, stabilize the flow of funds for affordable housing and boost construction; privatized by the 1997 Legislature to better work within the financial markets**
- **Governed by 9-member Board of Directors appointed by the Governor and subject to Senate confirmation; DEO Executive Director or senior-level designee sits ex officio voting member**
- **Works through developers, private lenders and investors, rating agencies, local governments, State Board of Administration and Division of Bond Finance**
- **Programs meet the housing needs of:**
 - Extremely low to moderate income families
 - Elders, farmworkers, people with special needs (disabilities, homeless, etc)
- **Internal and external oversight measures are used to determine that program resources are properly and efficiently used**



Affordable Housing Programs Provide Economic Benefit for Florida

Homeownership Programs

- Fixed-rate, low-interest mortgages and down payment assistance address over-supply of for-sale housing on the market today and help stabilize neighborhoods at risk from foreclosures
- 4,283 homes financed by Florida Housing in 2010 (\$430.6 million in first mortgage volume) — 89% were existing homes and 11% were “newly” constructed, but unsold for a longer period of time

Permanent Financing to Develop Rental Housing

- Key programs: federal Low Income Housing Tax Credit and tax-exempt Mortgage Revenue Bonds **PLUS** state gap financing
- In 2010 alone, rental housing financing created:
 - **An estimated 30,900 jobs**
 - **More than \$3.8 billion in economic benefit to Florida**



October 1 - A new chapter begins!

- **Align strategies**
- **Mandate collaboration**
- **Remove barriers to job creation**
- **Advance the Governor's 7-7-7 plan**



Questions?

Doug Darling

Executive Director

Florida Department of Economic Opportunity

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Tallahassee, FL 32399-4135

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FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY

Senate Committee on Community Affairs

Presented by: Mike McDaniel, Chief of Comprehensive Planning, Division of Community Development

Tuesday, September 20, 2011



Implementation of the Community Planning Act (HB 7207) Effective June 2, 2011



Highlights of New Legislation

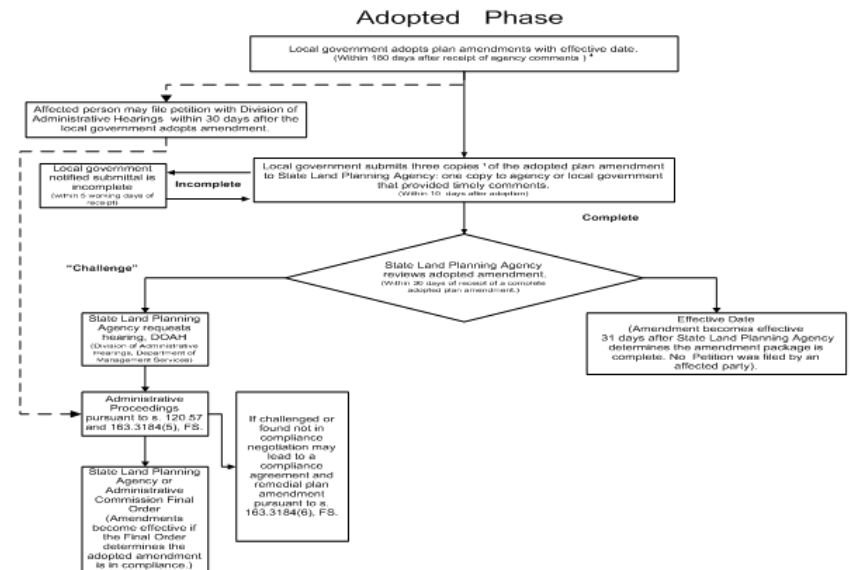
- **Streamlining/Incentivizing Sector Plans**
- **Simplifying Evaluation & Appraisal Process for Updating Comprehensive Plans**
- **Streamlining the Comprehensive Plan Amendment Process**
- **Focusing State Review Role on Protecting Important State Resources & Facilities**
- **Developers No Longer Required to Pay for Deficient Roads**

Highlights of New Legislation

- **Allowing Local Government Option to Maintain Concurrency Program for Transportation, Schools & Parks & Recreation**
- **Eliminated 3 Development Categories from DRI Review Requirements**
- **Eliminated Maximum Land Use Need Requirement**
- **Repealed Rule 9J-5 & Incorporated Portions into Statutes**

Updated Department's Website to Reflect HB7207

- Legislative Summaries
- Technical Assistance Papers
- Frequently Asked Questions
- Flowcharts of New Plan Amendment Process



Regional Workshops on HB 7207

- **Held 6 Workshops**
- **Sponsored by Regional Planning Councils**
- **Invited Local Governments, General Public & Practitioners**
- **Approximately 1,500 Persons Attended**
- **Presented Key Elements of HB 7207**
- **Audience Question and Answer Period**



Workshops with State and Regional Review Agencies

- **Brief on New Legislation**
- **Discussed Their Role in Reviewing Plan Amendments**



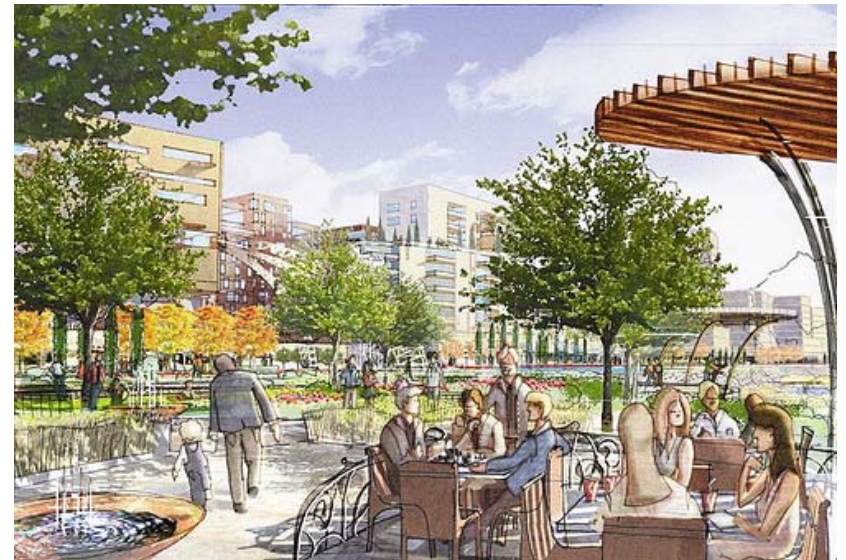
Sector Planning

- **Discussing Submittal of 3 New Sector Plans with Landowners**
- **Completed Conversion of 2 Approved Large Scale Plan Amendments to Sector Plans in Osceola & Nassau Counties**
- **Currently Reviewing 2 More Conversions to Sector Plans in Highlands & Hendry Counties**



Option to Maintain Concurrency

- **Local Governments Deciding to Keep Concurrency**
- **Only 1 Local Government, City of St. Augustine, Eliminated Transportation Concurrency**



Comprehensive Plan Amendment Process

- **Most Amendments Processed Under New Expedited State Review Process**
 - **No Adverse Impacts to Important State & Regional Resources & Facilities Identified by Reviewing Agencies**
 - **No Challenges to Plan Amendments Filed by the Department**
- **Approximately 50% Time Savings in Number of Days an Amendment is Reviewed by the State**



Comprehensive Plan Amendment Process

- **Some Amendments Processed Under More Conventional State Coordinated Review Process**
 - **Related to Evaluation & Approval Process or Areas of Critical State Concern**
 - **4 ORC Reports Filed with Objections by the Department since June 2, 2011**
 - **No Amendments Found Not In Compliance**



Transportation Concurrency

- **Many Questions Have Been Raised by Local Governments & Practitioners Regarding New Proportionate Share Contribution Requirements, Including Not Requiring Developers to Pay for Deficient Roads**
- **Coordinating with FDOT on Answering Questions & Posting Responses on Website**



Transportation Concurrency

- **As Required by HB 7207, FDOT is Interviewing Developers & Local Governments Regarding the New Proportionate Share Requirements in Preparation for Submittal of Report due to the Legislature by December 15, 2011**



Evaluation & Appraisal Process

- **Posted a Draft Schedule for Local Governments to Submit Letters to Department on Decision to Update Comprehensive Plan on the Department's Website**
- **Will Undertake Rulemaking to Adopt Schedule**



Not In Compliance Administrative Proceedings

- **Settled All 20 Cases based on HB 7207 Provisions**
- **Met Requirements in HB 7207 to Review Administrative Proceedings Within 60 Days of Effective Date & Dismiss or Amend Petition if Not Consistent with New Statutory Provisions**



Economic Development/Jobs

- **Meeting with Local Governments to Assist with Community Needs/Economic Development Opportunities & Land Use Technical Assistance**
- **Evaluating How Existing Grant Programs Can Be More Focused on Promoting Economic Development/Jobs**
- **Coordinating with Enterprise Florida and Division of Strategic Business Development to Promote Development in Designated Catalyst Sites in Rural Areas of Critical Economic Concern**



Economic Development/Jobs

- **Working with NASA, Space Florida, and FDOT to Create Future Development Concepts for the Kennedy Space Center & Promote Future Public/Private Partnerships in Use of Launch Sites & Development of Space Related Industrial Sites**



Questions?

Mike McDaniel

Chief of Comprehensive Planning,
Division of Community Development

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INSIGNIFICANT FISCAL IMPACT

In Florida, state “mandates” on local governments are described in the Florida Constitution as general laws

- requiring counties or municipalities to spend funds,
- limiting their ability to raise revenue, or
- reducing the percentage of a state-shared tax revenue.



Article VII, Section 18 of the Florida Constitution limits the ability of the Florida Legislature to enact laws that are mandates. A mandate requires:

- at least a two-thirds vote of the membership of each house, and,
- for a mandate that requires the expenditure of funds, a finding of important state interest.



However, there are a number of exemptions to the restriction against mandates:

- Laws adopted to require funding of pension benefits,
- Criminal laws,
- Election laws,
- The general appropriations act,
- Special appropriations acts,
- Laws reauthorizing but not expanding then-existing statutory authority,
- **Laws having insignificant fiscal impact**, and
- Laws creating, modifying, or repealing noncriminal infractions.



The Florida Constitution does not define what constitutes an insignificant fiscal impact. However, joint Senate and House guidelines describe an insignificant fiscal impact in the following way:

An insignificant fiscal impact is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term “insignificant” means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

Taken from: Senate President Margolis and Speaker of the House Wetherell, County and Municipality Mandates Analysis (1991).



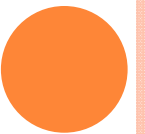
RECENT GROWTH MANAGEMENT DECISION: MANDATE REASONING

- The court reasoned that an insignificant fiscal impact would be 10 cents per resident or \$1.86 million dollars (thereby adopting the legislature's method of assessing an insignificant fiscal impact).
- The court decided that:
 - The cost of amending the comprehensive plan would be at least \$15,000 per jurisdiction required to amend its comprehensive plan (the cost of comprehensive planning in actuality varies from jurisdiction to jurisdiction).
 - All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
 - Therefore, local governments throughout Florida will be required to spend \$3,690,000 to comply with the bill (the court did not consider that even if this sum were accurate local governments would have two years in which to implement this requirement).



THE DECISION

- The case was overturned on other grounds and the law was rewritten.



RECOMMENDATION

- The phrase “insignificant fiscal impact” is open to multiple interpretations.
- Although the Legislature’s guidance documents are valuable for staff analyzing whether a bill has an insignificant fiscal impact, they are not binding on the courts.
- Article VII, Section 18(e) of the Florida Constitution explicitly anticipates the Legislature providing guidance on ambiguities such as this.
- In 2000, a broader Senate report, which reviewed legislative guidance on mandates issues, suggested that statutory language be drafted to clarify key terms and specifically noted that “insignificant fiscal impact” should be clarified.
- In conclusion, it may be valuable for the Legislature to clarify what constitutes an insignificant fiscal impact.



POTENTIAL LANGUAGE

Article VII, Section 18(d) of the Florida Constitution creates an exemption from the section's limitations on local government mandates for those laws that have an insignificant fiscal impact. For purposes of this exemption, an insignificant fiscal impact means an annual amount not greater than ten cents multiplied by the latest April 1 resident population estimate developed by the Florida Demographic Estimating Conference for the applicable fiscal year. In determining whether a law rises beyond an insignificant fiscal impact, the average annual fiscal impact of the bill should be used taking into consideration any average annual revenues or savings the law may create.





The Florida Senate

Interim Report 2012-115

September 2011

Committee on Community Affairs

INSIGNIFICANT FISCAL IMPACT

Issue Description

In Florida, state “mandates” on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. Article VII, Section 18 of the Florida Constitution limits the ability of the Florida Legislature to enact laws that are mandates. Any law passed by the Legislature that has such an effect requires at least a two-thirds vote of the membership of each house and, for a mandate that requires the expenditure of funds, a finding of important state interest. However, there are a number of exemptions. One of these exemptions is for laws that have an insignificant fiscal impact.

The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered. However, in 2010, a lower court decision indicated that there may be a need to clarify the phrase “insignificant fiscal impact” statutorily.

Background

Article VII, Section 18 of the Florida Constitution (the “mandates” provision) restricts the state’s ability to: (1) require local governments to spend money; (2) reduce local government authority to raise revenues; and (3) reduce local governments’ share of state taxes. Sixteen state constitutions incorporate similar protections for local governments due to a concern that state-level mandates were resulting in dramatically inflated property taxes and placing local governments in significant financial distress.¹ The intent of the Florida mandates provision is to give local governments bargaining power on the subject of unfunded mandates.

Article VII, Section 18, of the Florida Constitution

The mandate provision has two major components. First, it excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met; second, it prohibits the Legislature from enacting laws which reduce cities’ and counties’ revenue generating authority or percentage of state-shared revenues unless certain conditions are met. This provision applies only to general laws, as opposed to special laws, affecting cities and counties. It does not apply to other local governments such as special districts or school districts.

SECTION 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.—

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such

¹ See generally, Joseph F. Zimmerman, *The State Mandate Problem*, STATE AND LOCAL GOV’T REV., 78-84 (Spring, 1987); FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, 1991 REPORT ON MANDATES AND MEASURES AFFECTING LOCAL GOVERNMENT FISCAL CAPACITY (Sept. 1991).

county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancements enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, **laws having insignificant fiscal impact**, and laws creating, modifying, or repealing noncriminal infractions, **are exempt from the requirements of this section.**

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.²

Insignificant Fiscal Impact - Legislative Guidance

The Florida Constitution contains a number of exemptions and exceptions from the prohibitions against mandates. The exemption that is the subject of this interim project is the exemption for laws having an “insignificant fiscal impact.” The Florida Constitution does not define what constitutes an insignificant fiscal impact. However, joint Senate and House guidelines describe an insignificant fiscal impact in the following way:

This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term “insignificant” means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.³

² FLA. CONST. art. VII, s. 18 (emphasis added).

³ Senate President Margolis and Speaker of the House Wetherell, *County and Municipality Mandates Analysis* (1991).

Insignificant Fiscal Impact - Case Law

There has been very little case law addressing the issue of mandates. The First District Court of Appeals in *Lewis v. Leon County* struck down a law requiring local counties to fund a Regional Conflict Counsel.⁴ However, the court at no point discussed the amount of the expenditure required by the act or the exemption for an insignificant fiscal impact. The court only noted that the law did require local governments to spend money and did not contain a finding of important state interest as required by the Florida Constitution.⁵

In 2009, in *City of Weston v. Crist*, a trial level court struck down a major growth management bill finding that the bill would require local governments to spend money and finding that the amount of money that would be spent would not be insignificant.⁶ The decision was overturned on other grounds, and the statute was later rewritten. However, the court's discussion of what constitutes an insignificant fiscal impact did bring to the forefront the inherent ambiguity in that term and the possible need for legislative clarification.

The court decided that the law at issue violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or \$1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.⁷

Findings and/or Conclusions

Protecting local governments from undue fiscal hardships from unfunded state mandates is important to having a financially sound state. However, when major statewide laws are struck down because of confusion over what constitutes an unconstitutional mandate, it can cause costly and wasteful intergovernmental litigation and disrupt the implementation of legislative policies. Therefore, although minimizing the mandates the state places on local governments is important, it is also important for it to be clear which laws will constitute a mandate and which will be exempt.

The phrase "insignificant fiscal impact" is open to multiple interpretations. Although the Legislature's guidance documents are valuable for staff analyzing whether a bill has an insignificant fiscal impact, they are not binding on the courts. Article VII, Section 18(e) of the Florida Constitution explicitly anticipates the Legislature providing guidance on ambiguities such as this. In 2000, a broader Senate report, which reviewed legislative guidance on mandates issues, suggested that statutory language be drafted to clarify key terms and specifically noted that "insignificant fiscal impact" should be clarified.⁸ In conclusion, it may be valuable for the Legislature to clarify what constitutes an insignificant fiscal impact.

Options and/or Recommendations

While no action is necessary, it may provide clarity and guidance to the courts to statutorily clarify what is meant by an "insignificant fiscal impact." Professional committee staff recommends the following language:

Article VII, Section 18(d) of the Florida Constitution creates an exemption from the section's limitations on local government mandates for those laws that have an insignificant fiscal impact. For purposes of this exemption, an insignificant fiscal impact means an annual amount not greater than ten cents multiplied by the latest April 1 resident population estimate developed by the Florida Demographic Estimating Conference for the applicable

⁴ 15 So. 3d 777 (Fla. 1st DCA 2009).

⁵ *Id.*

⁶ Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010) *rev'd on other grounds, Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2011).

⁷ *Id.*

⁸ Comm. on Comprehensive Planning, Local and Military Affairs, *Review of Legislative Staff Guidelines for Screening Bills for Mandates on Florida Counties and Municipalities* (Interim Report 2000-24) (Sept. 1999).

fiscal year. In determining whether a law rises beyond an insignificant fiscal impact, the average annual fiscal impact of the bill should be used taking into consideration any average annual revenues or savings the law may create.