

GREENHOUSE GAS REDUCTIONS, WATER SUPPLY, AND GROWTH - NEW DIRECTIONS IN FLORIDA LAW



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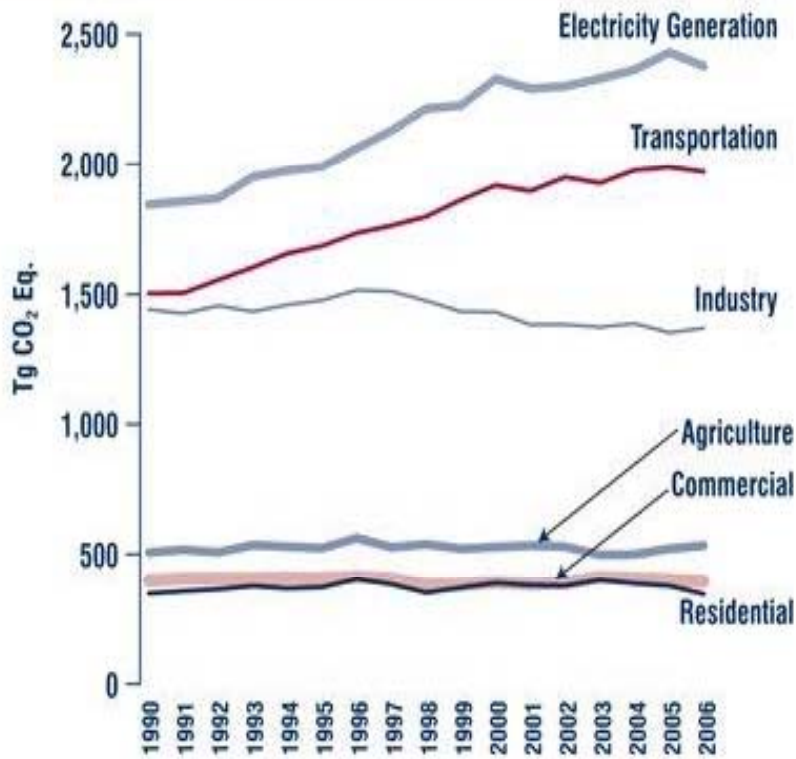
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Who is Emitting What GHGs?



Emissions Allocated to Economic Sectors



Note: Does not include U.S. territories.

- (“Detroit”) cannot do enough to reduce greenhouse gas emissions and prevent climate change impacts
- Part of strategy to reduce transportation sector emissions is based on smarter land use patterns.
- Focus must be on efficient energy use too (greener land use and building decisions).

The Basic Legal Framework as Applied to Local Governments



Recent Florida GHG/Climate Change Legislation

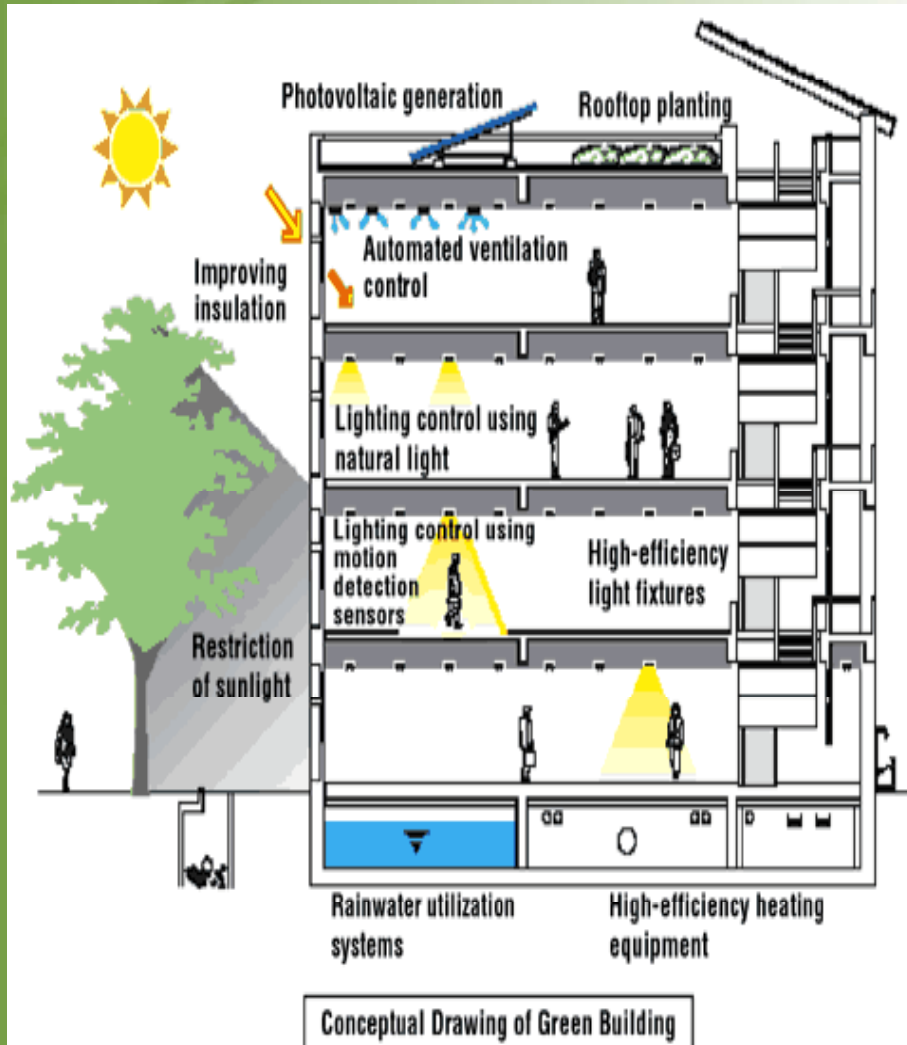


- SB 888 (2006) created a new Section in Chapter 377, F.S., "Florida Renewable Energy Technologies and Energy Efficiency Act", development of renewable energy technologies, Florida Energy Commission, tax credits/incentives for renewable energy development, matching grants.
- 2007: Florida signs Multistate compact for National Climate Registry: States participate under established protocols and reporting procedures to assure consistency between climate programs.
- Executive Orders 2007:
 - EO 07-126: "Leadership by Example: Immediate Actions to Reduce Greenhouse (State actions, buildings and vehicles)
 - EO 07-127: "Immediate Actions to Reduce Greenhouse Gas Emissions within Florida" (Emission levels for GHGs and targeted reductions by 2050)
 - EO 07-128: "Florida Governor's Action Team on Energy and Climate Change"

Green Buildings and Codes



What do Green Buildings Actually Do?



- Preserve natural resources by building in the right place
- Water Efficient
- Landscape Efficient
- Energy Efficient/reduce “heat islands”
- Overall result: Reduce energy use (GHG emissions)/1.7 billion tons of GHGs per year

HB 7123: Green Codes will be Required



- The Florida Building Commission is required by Florida law to update the Florida Building Code every three years, and the 2007 Edition represented the second update and third edition of the Code.
- 2007 Florida Legislature directed the Florida Building Commission to develop the model Green Building Ordinance.
- Overall purpose: help the local government become a more “sustainable community”
- **Model Green Building Code included:**
 - Targets for government’s operations
 - Building standards
 - Incentives (reduce fees, expedite permits, rebates)
- **New residential projects shall satisfy all of the requirements associated with any of the following:**
 - The current Green Home Designation Standard of the Florida Green Building Coalition (“FGBC”),
 - The current USGBC LEED for Homes® program,
 - The current National Association of Home Builders National Green Home program, or
 - The GBI new home designation

Comprehensive Planning and Climate Change



HB 697: Comp Plan Requirements



Section 163.3177(6)(a), F.S.:

- Link between land use and transportation is made: HB/697, amends “Growth Management Act” Comprehensive Plan elements shall include greenhouse gas reduction strategies in following elements:
 - Conservation
 - Future Land Use
 - Housing
 - Transportation
- Local governments must comply with new requirements no later than due date of EAR based amendments
- Land development regulations must be consistent with Comp Plan (revisions within one year). Section 163.3202, F.S.
- Link to Green Codes.....

DCA, “You’ve Been ORC’d!”



- After 2008, wide ranging consistency w/ HB 697
- Rulemaking on 9J-5, F.A.C. to achieve some consistency and guidance for local governments
- Tampa, Hillsborough County, Plant City: Objection! HB 697 not fulfilled with recommendations to include data and analysis and goals, objectives and policies
- Amendments inconsistent with provisions of Chapter 187, F.S. (State Comprehensive Plan)

An Example in Compliance (Broward County)

- Housing policies promoted which use energy conservation principles
- Support housing policies with multi-modal focus
- Encourage developers to comply with green certification standards
- Energy conservation education program
- Land Use Element policies for smart growth to discourage sprawl and reduce GHGs
- Focus on redevelopment and new policies for green certification standards



Broward: Model Comp Plan Concepts



- Refocus transportation policies on density along corridors, coordination with MPO, additional Tri-Rail stops
- Policies to promote “NatureScape Broward” their existing program utilizing native and low impact landscapes
- Policy to develop a county-wide Climate Change program to mitigate AND adapt to the consequences of Climate Change
- Water conservation and reuse
- Refocus and add policies in Transportation Element to reduce GHGs through a new “Energy Efficiency” Section
- Broward potentially developing and adopting Climate Change Element
 - Model Climate Change Mitigation / Adaption Element of Comp Plan (SFRPC was going to.... TCRPC adding Energy Element)

HB 697 (2008): Renewable Energy Devices



Section 163.04, F.S. Energy devices based on renewable resources.—

- No adoption of ordinances which prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.
- Solar collectors, etc. cannot be prohibited by deed restriction, etc. based on renewable resources from being installed on buildings erected on the lots or parcels/condominium.
- Check your Code, are you restricting these uses?

Energy and Florida Building Code



HB 697: Revamp the FBC



- Florida Building Commission directed to include provisions in the 2010 edition of the Florida Energy Efficiency Code for Building Construction necessary to:
 - Section 553.9061, F.S.: Increase the energy performance of new buildings by at least 20 percent as compared to the energy efficiency provisions of the 2007 Florida Building Code adopted October 31, 2007.
 - Further scheduled provisions shall increase energy efficiency by 30, 40, and 50 percent compared to the 2007 Florida Building Code for the 2013, 2016, and 2019 editions of the Florida Energy Efficiency Code for Building Construction, respectively.

HB 7135 (2008): Creation of Energy Conservation and Sustainable Buildings Act



- Section 255.2575(2), F.S.: create 50% more energy efficient buildings by 2015 and **state constructed buildings** shall comply with LEED (or other nationally recognized standards)
- Provided authority to amend State Comprehensive Plan (Chapter 187, F.S.) to include energy and climate change policies
- Florida Climate Protection Act (Section 403.44, F.S.) on reporting to Climate Change Registry and rulemaking for cap and trade system
- Section 255.254, F.S.; prohibits a state agency from leasing or constructing a facility without having secured from the department a proper evaluation of life-cycle costs for the building.

HB 7135: Are You Complying?



- **Section 255.252, F.S.: All county, municipal, school district, water management district, state university, community college, and Florida state court buildings shall be constructed to meet:**
 - The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
 - The Green Building Initiative's Green Globes rating system,
 - The Florida Green Building Coalition standards, or
 - A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.

This section shall apply to all county, municipal, school district, water management district, state university, community college, and Florida state court buildings the **architectural plans of which are commenced after July 1, 2008.**

HB 7153 (2008): FBC/Energy Code



- Directs the Florida Building Commission (FBC) to develop a rule for determining the cost effectiveness of energy conservation measures considered for inclusion in the Florida Energy Code.
- Administrative rule directed to be completed and applied to the 2010 update of the energy provisions of the Florida Building Code.
- Energy Code Work Group of FBC currently developing recommendations regarding energy conservation measures for increasing efficiency requirements in the 2010 Florida Building Code by 20% as required by law.
- This is a BIG DEAL: Land development regulations/local government zoning codes will be impacted

Examples of Local Government Response to Climate Change



Examples of Regional Programs



- Space Coast Climate Initiative
 - Brevard, UCF, municipalities, consulting groups, media representatives
- Goal: “...convince local governments to implement plans, policies, and/or programs to address global climate change.” Solutions are grouped into 3 major themes:
 - Land acquisition — consistent with managed withdrawal and perhaps including developed and undeveloped parcels.
 - Regional sand management — designed to ensure best use of non-renewable and limited “beach compatible sand” reserves along open coastlines and at tidal inlets.
 - Comprehensive planning — revise existing language to include consideration of climate change and sea-level rise within each Comprehensive Plan Element (i.e., conservation, surface water protection, recreation and open space, future land use, and etc.)
- Events, forums, white papers, website resources

Miami-Dade County



- 1993 passed Resolution recognizing threat of threat of global warming and developing first plan (1995) to reduce carbon emissions
- Alternative Fuels Advisory Committee 2002 Report and Recommendations
- 2007 Developed Green Action Agenda from First South Florida Sustainable Building Conference
- 2006 Climate Change Advisory Task Force/Science Committee on Sea Level Rise
- Two major reports with Recommendations
(http://www.miamidade.gov/derm/library/08-10-04_CCATF_BCC_Package.pdf)
- Climate Change Program Coordinator
- 2007 adoption of Urban CO2 Reduction Plan," identifying 35 unique opportunities to improve County operations, reduce energy demand, improve quality of life, and establish an example for the rest of the country to follow
- Creation of 3 sea level rise scenarios

Broward County



- Initial Resolution to reduce GHGs (2007); (committed to reducing GHG emissions from County operations to 7 percent below 1997 levels by the year 2015)
- Government Operations Climate Change Report (2008);
- Creation of Climate Change Task Force (2008) to develop recommendations for a coordinated countywide strategy in mitigating the causes, and addressing the local implications, of global climate change (7 Sub-committees ranging from GHG reductions to natural systems adaptation).
 - Develop projects, incentives, adaptation strategies, education and outreach, secure funding, coordination with other agencies and governments
- 2008 Resolution to support green building practices in the design, construction, use, and maintenance of its buildings
- Climate Change Leader Emerald Award to recognize businesses, government, individuals, or organizations in Broward County demonstrating a commitment to protecting and preserving our environment
- Four County regional summit anticipated Fall 2009

Gainesville



- Document: “One community’s strategy to reduce global warming”
- GHG reductions, improve water & energy efficiency, improve efficiency of power generation, increase renewable energy use, improve transportation and land use:
 - Municipally-owned utility, GRU, purchasing a natural gas distribution system in 1990 and electricity generated from wind and landfill gas. Contract to purchase additional landfill gas and construction of a 100-megawatt (MW) biomass-fueled power plant.
 - Gainesville- “Clean & Green”/Green Building Code (Chapter 6/Article 1.5/Section 6-5-15)
 - Large-scale electronic communications network to replace outdated technology and allow traffic signals to be controlled in a coordinated manner by a central computer to save fuel by reducing traffic stops and idling time will be enormous and result in substantial carbon emission reductions – not to mention the reduced level of frustration by drivers.
- Cash back energy and water efficiency programs
- Aggressive land acquisition

Other City Initiatives



- Boca Raton- “A Green and Sustainable Community”, 8 page publication (Unique addition of Universities into mix)
 - <http://www.ci.boca-raton.fl.us/pdf/BocaEnv.pdf>
- Delray Beach- Extensive Task Force Report & Recommendations presented to City Commission January 2009 (Department/City Wide Strategy) (Met for 1 year, extensive report January 2009)
 - <http://sustainabledelray.org/report.htm>
- Jacksonville

Local Governments: How Green do you Want to Be?



The Components: “Green Initiatives”, Rating Systems/Programs & Codes



Green or Sustainability Initiatives

- Sustainability initiatives of a government or business to address many factors:
 - Construction
 - Operations (Energy, Recycling & Water)
- Basis for initiative may be motivated by profit (marketing), reduction of cost, social consciousness, regulation, stakeholder pressures

Rating systems

- A third-party certification program / accepted “benchmark” for design, construction and operation of green buildings
- Most rating systems are applicable across a range of building types and can be applied to both new building projects and existing buildings.

Green Building Codes

- Generally more focused on energy, design and construction

Climate Change and Sustainability

Energy Data Management

*Utility Metering
Monitoring Software
Monthly Bills
Load Profiles*

Energy Supply Management

*Procurement Strategy
Demand / Supply
Organization
Demand Response*

Strategic Integration

*Resource Management
Financial Impacts
Accountability
Mandate*

Reporting, Education and Awareness

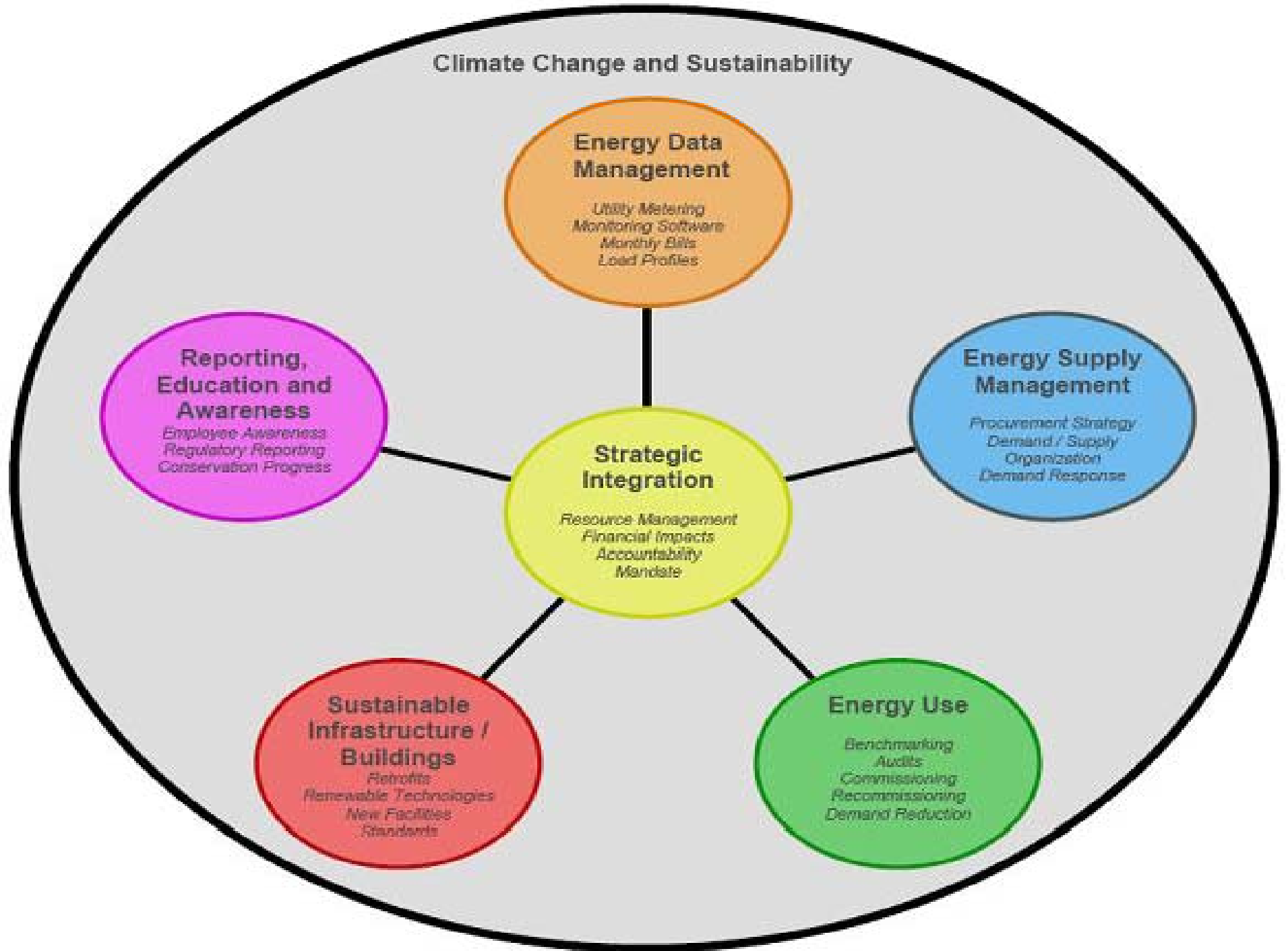
*Employee Awareness
Regulatory Reporting
Conservation Progress*

Sustainable Infrastructure / Buildings

*Retrofits
Renewable Technologies
New Facilities
Standards*

Energy Use

*Benchmarking
Audits
Commissioning
Recommissioning
Demand Reduction*



What is the “Green” Goal?



- Local governments in best position to reduce vehicle miles traveled (shape land use, building construction, government operations, utilities and transportation policies).
- Just comply with regulatory requirements or design a “sustainability policy”? Determine the best mix to achieve the vision or goal.
- Determine a vision or goal for the community’s “sustainability policy” and complete an assessment of what is feasible within the municipality in terms of staffing and budgets.
- Review the models and programs that exist and tailor the policy to the community’s vision or goal.
- Research available funding options.

Get Your \$\$ Green \$\$ On: the Benefits



Florida Energy and Climate Commission



- 2008: HB 7135 created the Florida Energy & Climate Commission within the Executive Office of the Governor (from the Florida Energy Commission) and is the primary organization for state energy and climate change programs and policies. Their role is to address:
 - American Recovery and Reinvestment Act 2009
 - Grants, Solar Rebates & Incentives * Florida Green Governments Grant Act
 - Energy & Climate Change Policy

The State's \$\$ Green \$\$



- State's allocation of Energy Efficiency and Conservation Block Grant: \$30 Million, programs to include:
 - Florida Energy & Climate Commission will award grants to help local governments, including municipalities, counties, and school districts, develop and implement "green" government programs identify and put into place cost-efficient solutions that reduce greenhouse gas emissions, improve quality of life, and strengthen the state's economy".
 - Rule 27N-2.100, F.A.C. to "establish procedures for execution of the Florida Green Government Grants Act", rule development initiated February 2009. It will include: "requirements governing the application process, review, award, and administration of grants awarded pursuant to the Florida Green Government Grants Act" (last workshop March 2009).
 - Florida Residential Retrofit program is to quickly develop a program to retrofit Florida's pool of older homes to become more energy efficient and to lay the ground work for a long term market-based program that offers a whole-house approach for reducing energy use

What the Lawyer Needs to Know: Greenwashing



Greenwashing is the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service

It's Not Easy Being Green...



- Federal Trade Commission (FTC) is now revising the “Green Guides” a year earlier than planned (Promulgated in 1992)
- Green Guides are the administrative interpretation of § 5 of the Federal Trade Commission Act as applied to environmental marketing
 - Address advertising related to sustainable versus renewable products; carbon offsets and renewable energy certificates; and green building and textiles products (Eco-seals and certifications)
- Section 5 of the FTC Act gives rise to consumer litigation and the FTC itself can institute a lawsuit against an eco-marketer to prohibit greenwashing and to punish those that engage in greenwashing

Florida law includes:

- Section 817.41, F.S. Prohibits misleading advertisements and recovery of damages.
- Section 501.201, F.S. Unfair or deceptive acts in commerce.

Why is This Important?



- Cases are being won by those alleging “greenwashing” violations such as creating “self-certified” green credentials
- FTC Green Guides are addressing green building / textiles products (Eco-seals and certifications); therefore, can be applicability to local governments for a “green program”, seal or certification.
- It’s only a matter of time before this translates into liability for public entities calling themselves “green”

Avoid Exposure By....



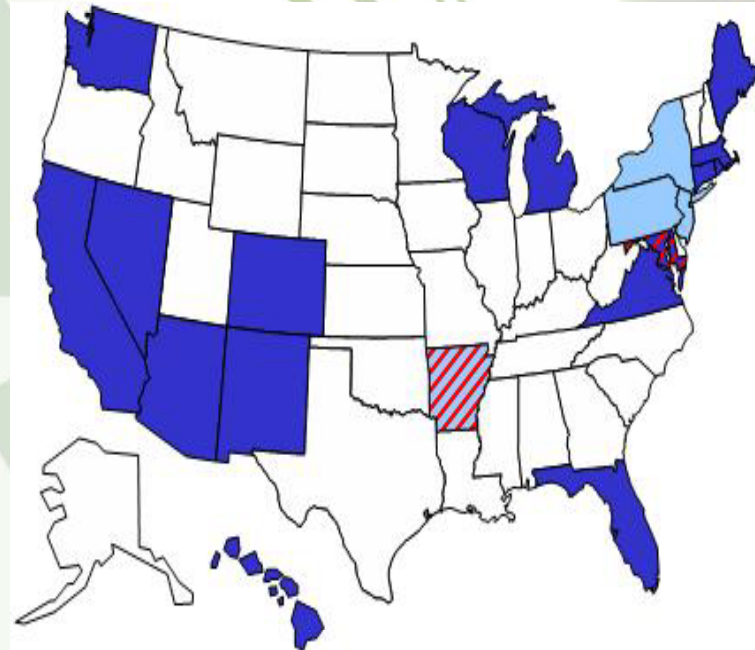
- Avoid saying you're green when you're not (the hidden trade off: one attribute green paper policy and whole City is green)
- Don't say you're green without some proof (our City uses "green" lighting, when equipment doesn't specify)
- Don't be vague about your green program (our City uses non-toxic cleaning products)
- Don't concentrate on the irrelevant parts of your green program (the City only uses CFC – free products, they've been banned for 30 years!)
Avoid fibbing (we reduced x GHG tons or we use only 100% recycled paper)
Don't base claims on the "lesser of two evils" (City utilizes only "green" herbicides/insecticides)

Source: The "Six Sins of Greenwashing" Terra Choice, Environmental Marketing

Legal Import of Green Buildings and Codes



- LEED is the country's most recognized seal of approval for green buildings.
- Gap between design and construction, which LEED certifies, and how some buildings actually perform.
- Some LEED buildings have NOT even scored high enough to qualify for the Energy Star label granted by the Environmental Protection Agency
- LEED Buildings gain tax credits, attract tenants, charge premium rents and project an image of environmental responsibility.



- LEED Certification Required for State Buildings and/or State-Funded Buildings
- LEED Certification Recommended for State Buildings and/or State-Funded Buildings
- Green Globes Certification Required or Recommended for State Buildings and/or State-Funded Buildings

Evolving Law



- *Shaw Development v. Southern Builders* (No. 19-C-07-011405, Somerset County, Maryland Southern Builders, the general contractor, seeking payment, filed a US\$54,000 mechanic's lien against Shaw Development. USGBC did not certify the completed condominiums, the developer sued the contractor, claiming \$635,000 in lost tax credits.
- Maryland offers state tax credits of up to 8 percent of a project's total cost for buildings that 1) are greater than 20,000 square feet and 2) are certified under the USGBC standards.
- Case settled before trial.

USGBC Response and Reliance on LEED



- LEED now requiring all newly constructed buildings to provide energy and water bills for the first five years of operation as a condition for certification. The label could be rescinded if the data is not produced, the officials said.
- “What makes the debate regarding the liability and enforceability both interesting and necessary...is the public’s use of LEED as the standard for building codes, tax incentives, zoning rules and private contractually created energy performance benchmarks.”
 - Chris Hill, “Musings On the LEED De-Certification Firestorm”

Debate is set as Florida Energy Code is developed and the legal framework is already tied to LEEDs and other certifications.

Greenwashing and Green Building



- Building “green” can mean different things to different people. Some people assume that a green building is energy-efficient, while others believe that it will provide a healthier indoor environment, while still others focus on site selection. To many in the building industry, green means sustainable, which is yet another term subject to multiple meanings. The lack of a generally accepted definition creates a landscape that can foster unintentional greenwashing.
 - “Coming Clean: Green Building Brings Risk of Greenwashing”, by Jay B. Freedman

