Legislative Reporter 3/3/18

There is one week left in the legislative session, which is scheduled to end on March 9. On Feb. 27, the House and Senate agreed on allocations, which are the specific amounts to be spent for the major budget area; the total allocation amounts add up to $32.2 billion in General Revenue spending. Budget conference subcommittees had until March 2 to complete negotiations on their policy-specific areas. The House-Senate budget conference will iron out the spending details. The biggest pot is for PreK-12 education, at $12.1 billion; higher education, at $4.4 billion; healthcare, at $9.8 billion; and civil and criminal justice; at $4.2 billion. Other issues like agriculture, the environment and natural resources are at $434 million and general government operations at $317 million.

Note that state law requires the budget must be finished 72 hours before a final vote.

The latest Bill Tracking Report, dated March 3, can be viewed here. Note that committee meetings have concluded so those bills that have not made it through their committees of reference are likely not to pass. The following bills of note had action over the past week.

Growth Management:

Affordable Housing: CS/CS/CS/HB 987 (Rep. Cortez) was passed by the House on March 1 and has been received by the senate and referred to three committees of reference. The bill revises several key provisions of law and creates additional processes to expedite the creation of affordable housing in Florida.

The bill creates the Hurricane Housing Recovery Program and the Rental Recovery Loan Program to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes. It also creates a new process in s.420.56 dealing with the disposal of surplus lands for use as affordable housing. Under this process, the Departments of Environmental Protection and Transportation and the water management districts must notify the Florida Housing Finance Corporation when non-conservation surplus lands become available. In conjunction with these entities, the Florida Housing Finance Corporation must evaluate these lands for suitability for affordable housing. If the land is suitable, the entity that owns it must first offer such parcels to the county or municipality where the land is located.

The bill adds evaluation criteria to be used by local jurisdictions when preparing their inventory of property appropriate for use as affordable housing. The bill provides for an expedited local permit approval process for affordable housing by requiring the application review to be completed in 15 days and reducing the time a local government entity has to approve or deny permit applications to 60 days. The bill also prohibits the Florida Housing Finance Corporation from awarding, distributing, or allocating funds to any applicant, principal of an applicant, or an affiliate of an applicant that has been convicted of, entered into a consent decree, or otherwise settled charges related to material misrepresentation or fraudulent actions, in connection with an application for any program administered by the corporation. It also adds specific requirements for information that must be included in local reports on impact fees.

CS/SB 1328 (Sen. Perry), a similar bill, was reported favorably by the Senate Appropriations Committee, its last committee of reference, on Feb. 27.

***Developments of Regional Impact**:* CS/CS/SB 1244 (Sen. Lee) was reported favorably by the Senate Appropriations Committee on Feb. 27 and the Senate Rules Committee, its last committee of reference, on March 1. The bill is now generally consistent with CS/CS/HB 1151 E2 (Sen. La Rosa), which was passed by the House on March 2 and is currently in Messages to the Senate. (Note that the language in CS/CS/CS/HB 1151 has also been incorporated in to CS/CS/HB 883 E1 (Rep. Ingoglia), which is on the House Calendar for Third Reading on March 5.)

Both bills would eliminate state and regional review of existing Developments of Regional Impact (DRIs) and the Florida Quality Development (FQD) program, and transfers the responsibility for implementation of, and amendments to, DRI and FQD development orders to the local governments in which the developments are located. It includes language that states that the date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, cannot be amended to an earlier date unless the local government can demonstrate certain things. Additionally, it states that any proposed change to a DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including, but not limited to, procedures for notice to the applicant and the public regarding the issuance of development orders. However, a change to a development of regional impact that has the effect of reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved, and if the development would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.

There are three differences between the two bills. CS/CS/CS/SB 1244 also includes language intended to close a loophole in current law that allows an independent special district to convert to a municipality even if it has no population. It adds a criterion to now require that the district must meet the minimum populations standards specified in s.165.061(1)(b). This language is not included in the house version.

CS/CS/CS/HB 1151 E2 was amended on the floor to add amend s.163.3164 to include a definition of "master development plan" or "master plan," to mean a planning document that integrates plans, orders, agreements, designs, and studies to guide development as defined in this section and may include, as appropriate, authorized land uses, amounts of horizontal and vertical development, and public facilities, including local and regional water storage for water quality and water supply. The term includes, but is not limited to, a plan for a development under Chapter 163 or Chapter 380, a basin management action plan pursuant to s.403.067(7), a regional water supply plan pursuant to s.373.709, a watershed protection plan pursuant to s.373.4595, and a spring protection plan developed pursuant to s.373.807. This language is not included in the senate version.

CS/CS/CS/HB 1151 E2 was also amended on the floor to allow an applicant, whose application for development approval was filed with a concurrent plan amendment application and was pending as of May 14, 2015, to elect to have the application reviewed pursuant to s.380.06(30) as it existed on that date. The election shall be in writing and filed with the affected local government, regional planning council, and state land planning agency before Dec. 31, 2018.

***Impact/Permit Fees**:* CS/CS/CS/HB 697 E1 (Rep. Miller) was passed by the House on March 1 and is Messages to the Senate. The bill:

- provides that collection of impact fees may not occur before the issuance of the building permit, for the property that is subject to the fee;
- requires that the impact fee be reasonably connected to, or have a rational nexus with: 1) the need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and 2) the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction;
- requires the local government to specifically earmark funds collected by the impact fees for use in acquiring, constructing or improving capital facilities to benefit the new users;
- prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction;
- provides that impact fee requirements do not apply to water or sewer connection fees, and
- requires a local government to review an application for a detailed specific area plan or related development order within 30 days of receipt and issue a letter indicating the information is sufficient or specifying areas that are deficient. The applicant has 30 days to respond and the local government must act on the application within 90 days of receipt of the initial or supplemental submission, which ever is later, unless the deadline is waived in writing by the applicant. An approval or denial of the application must include written findings supporting the local government decision.

Note that a previous provision that would limit local government's ability to require developer contributions for public facilities when adopting a detailed specific area plan or related development order, was removed during the Third Reading of this bill.

CS/CS/SB 324 (Sen. Young), which is basically consistent with CS/CS/CS/HB 697 E1, was reported favorably by the Senate Appropriations Committee, its last committee of reference on Feb. 27 and has been placed on the Senate Calendar on Second Reading. This bill does not include the language regarding review time frames included in the house version.

CS/CS/SB 1144 (Sen. Perry), which requires the governing body of a local government to post its building permit and inspection fee schedules on its website, was reported favorably by the Senate Appropriations Committee, its last committee of reference, on Feb. 27. The bill also requires that before Dec. 31, 2019, the governing body of a local government must publish its building permit and inspection utilization report on its website. After Dec.31, 2019, a local government must update the report prior to amending its building permit and inspection fee schedule. Information that must be included in the report is specified and the report must use the most recently completed financial audit.

As amended, the bill is consistent with CS/CS/CS/HB 725 (Rep. Williamson), which was passed by the House on Feb. 24 and has been received by the senate. CS/CS/SB 1144 has been placed on the Senate Calendar on Second Reading.

***Lands Used for Governmental Purposes**:* CS/CS/HB 1173 E1 (Rep. Raschein) was amended on the floor to add legislative intent language with respect to providing affordable housing and protecting and improving the water quality in the Apalachicola Bay area on Second Reading on March 2. The bill was

placed on the calendar for Third Reading on March 5. The bill adds additional procedures for the selection of lands under the Military Base Protection Program by requiring DEO to annually to request military installations in Florida to submit a list of base buffering encroachment lands for acquisition. The Florida Defense Support Task Force is required to analyze the resulting list and provide ranking recommendations to DEO, with DEO submitting its final list to the Board of Trustees of the Internal Improvement Trust Fund for acquisition. The board is required to use federal appraisal standards and to disclose its appraisal to the seller when federal partnership funds are available. The bill authorizes the board to lease or convey the acquired military buffer land at less than appraised value to the military installation, provided the conveyance states the land will revert to the Board of Trustees if the military installation does not use the land as a buffer or if the military installation closes. The bill also allows lands to be acquired if they will prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern. The bill also amends s.360.0666 F.S. to allow a land authority in a critical area to use authority funds to pay costs related to the development and construction of affordable housing projects.

This bill also amends s.259.105(4), the Florida Forever Act, to expand the evaluation criteria and performance measures to specifically include ones related to the mitigation of the effects of natural disasters and floods in developed areas. It also amends s.380.508 (4)(e), which deals with projects done through the Florida Communities Trust. The bill adds a new guideline related to urban greenways and open space projects.

CS/CS/SB 1622 (Sen. Flores) is a similar bill but it does not include the amendments described in the above paragraph or the floor amendment. This bill has been placed on the Senate Special Order Calendar for Second Reading on March 6.

Public Meetings/Public Participation: CS/HB 79 (Rep. Roth) was reported favorably by the House Government Accountability Committee, its last committee of reference, on Feb. 26. The bill defines "de facto meeting" as the use of board or commission staff or third parties, acting as intermediaries, to facilitate a discussion of public business between or among board or commission members. The bill clarifies that de facto meetings are subject to the Sunshine Law. The bill specifies that members of the same board or commission may participate in fact-finding exercises or excursions to research public business, and may participate in meetings with a member of the legislature, if:

- the board or commission provides reasonable notice;
- the exercise, excursion, or meeting is open to the public;
- a vote, an official act, or an agreement regarding an action at a future meeting does not occur;
- there is no discussion of "public business" that occurs; and
- there are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

During its deliberations, the committee added amendments that:

- specifies that fact-finding exercises and excursions as well as meetings with a member of the legislature must be open to the public; and

- removes an earlier provision from the bill that specified that the bill may not be construed to require public notice of, and access to, any gathering of two or more members of the same board or commission.

CS/HB 79 is now virtually identical to SB 192 (Sen. Baxley), passed by the Senate on Jan. 31, with one exception. SB 192 still contains the provision discussed in the last bullet above. SB 192 has been sent to the House in Messages.

Tree, Timber, and Vegetation Trimming and Removal*:* CS/CS/ HB 521 (Rep. Edwards-Walpole), a strike-all amendment, was reported favorably by the House Government Accountability Committee, its last committee of reference, on Feb. 26. It is scheduled on the House Calendar for Third Reading on March 5. The amended bill creates s.589.37 which:

- prohibits local governments from requiring permits or other approvals for vegetation maintenance and tree pruning or trimming within a right-of-way for flood protection or drainage control established by a water management district, a water control district or a special district. This provision does not include the removal of trees or vegetation outside of the right-of-way which may be authorized in accordance with applicable local ordinances;
- requires the various districts to give a local government five business days' notice prior to conducting routine vegetation and tree maintenance activities;
- allows local governments to license and regulate persons engaged in vegetation maintenance and tree trimming or pruning;
- allows the various districts to enter into agreements with local government to perform the maintenance services for the district; and
- specifically states that this section does not apply to the exercise of specifically delegated authority for mangrove protection.

The revised bill is similar to language included in CS/SB 574 (Sen. Steube). However, CS/SB 574 also contains provisions that amend s.163.3209, dealing with electric transmission and distribution line right-of-way maintenance. The bill states that, if an electric utility provides written notice to a local government that its local vegetation management plan, ordinances, or practices may adversely impact electric reliability by allowing trees or other vegetation to be planted where, at mature height or width, the trees or other vegetation may conflict with electric facilities in either normal or inclement weather, the local government is liable to the electric utility for all reasonable restoration costs thereafter incurred by the electric utility attributable to damages or electrical outages caused by such trees or other vegetation. In any civil action by an electric utility against a local government to recover such damages, the burden of proof shifts to the local government to demonstrate that the damages are not attributable to the trees or other vegetation or that the damages are otherwise in amounts less than those claimed by the electric utility.

CS/SB 574 is in the Senate Environmental Preservation and Conservation Committee, its second of three committees of reference. This committee does not have any additional meetings scheduled.

Vacation Rentals: CS/HB 773 (Rep. La Rosa) was reported favorably by the House Government Accountability Committee, its first committee of reference, on Feb. 22. The bill now moves to the House Commerce Committee, its last committee of reference; this committee has no upcoming events on the calendar. The bill amends current preemption authority to add that a local law, ordinance, or regulation

may regulate activities that arise when a property is used as a vacation rental provided such regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s.509.242 or a long term rental subject to the provisions of Chapter 83 or whether a property owner chooses not to rent the property. It grandfathers local laws, ordinances, or regulation adopted on or before June 1, 2011, including when the duration or frequency requirements are being amended to be less restrictive.

During the committee deliberations, Rep. La Rosa withdrew a strike-all amendment previously filed that would make the bill generally consistent with the Senate version. This brought the bill version back to its original language discussed above. Additionally, a previously filed amendment by Rep. Smith, which would allow local governments to regulate vacation rentals that are not homestead properties, was voted down.

The committee amended the bill to add language regarding rentals to sexual offenders. The additional language would require the operator of any public lodging facility to ask guests at check-in if they are sexual predators and immediately inform other guests if the response is positive. Additionally, a sexual offender must register at the local sheriff's office 48 hours prior to arrival at a vacation rental. Furthermore, a vacation rental owner or operator who rents to a sex offender must notify property owners within 1,000 feet of the property within 24 hours prior to the arrival. Every internet advertisement or online posting of a vacation rental must prominently display the complete address of the rental and a link to the state's sexual predator website.

CS/CS/SB 1400 (Sen. Steube), a similar bill, is in the Senate Appropriations Committee, its last committee of reference; this committee has no upcoming events on the calendar. The bill creates the "Florida Vacation Rental Act" within part III of Chapter 509, F.S., explicitly preempting the regulation of vacation rentals to the state and separating the regulation of vacation rentals from the regulation of public lodging establishments, such as hotels and motels. The Division of Hotels and Restaurants within the Department of Business and Professional Regulation (DBPR) is authorized to implement the act, including licensing vacation rentals and enforcement. The bill requires license applications to include an emergency contact telephone number. The license number must be displayed in advertisements for a vacation rental. Multiple unit vacation rentals must be inspected biannually in the same manner as hotels and motels. Under the bill, local governments only may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. However, the bill grandfathers local regulations adopted before June 1, 2011, or amended to be less restrictive, which prohibit vacation rentals, or regulate the duration or frequency of vacation rentals. The bill also sets maximum occupancy limits for vacation rentals. It does not include the sexual predator language amended in to the House bill.

Vegetable Gardens: SB 1776 (Sen. Bradley) was passed by the senate on March 1 and is in Messages to the House. The bill prohibits local governments from regulating vegetable gardens on residential properties. Additionally, any such ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable. However, local governments may still adopt a local ordinance or regulation of a general nature which does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species. (Note a late filed amendment by Sen. Bradley that would have the effect of

preempting local governments from regulating the sale and use of plastic straws was withdrawn during floor discussion.) There is no House companion to this bill.

Economic Development/Redevelopment:

***Local Government**:* CS/CS/HB 883 E1 (Rep. Ingoglia), has emerged as an omnibus growth management bill. The bill is placed on the House Calendar for Third Reading on March 5. The bill provides that a petition to establish a new community development district of less than 2,500 acres over land in one jurisdiction may identify significantly contiguous parcels that the petitioner expects to add to the district's boundaries within the next 10 years. Specific information regarding these parcels is required and no parcel can be included in the petition without the written consent of the landowner. The bill also includes a process for amending the district to include such a parcel.

Bill language from two other bills was incorporated by the House Government Accountability Committee, its last committee stop: CS/HB 17 (Sen. Raburn), passed by the House on Jan. 12, which would terminate all CRAs by Sept. 30, 2038 unless approved by a super majority of the governing body; and CS/CS/HB 1151 E2 (Rep. La Rosa), which eliminates state and regional review of existing Developments of Regional Impact (DRIs), eliminates the Florida Quality Development (FQD) program, and transfers the responsibility for implementation of, and amendments to, DRI and FQD development orders to the local governments in which the developments are located.

The revised bill also includes the following changes:

1) Adds a new definition to s.163.3164 which defines a "master development plan" or "master plan" to be a planning document 363 that integrates plans, orders, agreements, design, and studies to guide development as defined in this section and can include, as appropriate, authorized land uses and amount of horizontal and vertical development, and public facilities including local and regional water storage for water quality and water supply. The term includes, but is not limited to, a plan for a development under Chapter 163 or Chapter 380, a basin management action plan pursuant to s.403.067(7), a regional water supply plan pursuant to s.373.709, a watershed protection plan pursuant to s.373.4595, and a spring protection plan developed pursuant to s.373.807.
2) Adds s.163.3167(8)(d) which would require that an initiative or referendum to create a rural boundary or urban development boundary must provide for reconsideration and ratification every 10 years. An initiative or referendum to reconsider and ratify under this paragraph shall be held during a general election, as defined in s.97.021. For purposes of this paragraph, any such rural boundary or urban development boundary adopted by initiative or referendum prior to Jan. 1, 2008, shall be reconsidered and ratified at the first general election occurring after July 1, 2018.
3) Includes language which would allow any application for development approval filed with a concurrent plan amendment application pending as of May 14, 2015, to continue to be reviewed under the old DRI process if the applicant elects. Such election shall be in writing and filed with the affected local government, regional planning council, and state land planning agency, prior to Dec. 31, 2018.
4) Amends s.380.0651(3)(h), which deals with exemptions from s.380.06 for development within Dense Urban Land Areas. The language with respect to the Wekiva Study Area is amended to state that subsection requirements do not apply within the boundary of the Wekiva Study Area unless any proposed development is located in a county or municipality that has implemented all of the following:

a) One or more substantial alternative water supplies of not less than 5 million gallons per day providing service within the Wekiva Study Area; and
b) One of the following adopted plans, which must be consistent with the local comprehensive plan:
    i) A specific area plan;
    ii) A sector plan pursuant to s.163.3245; or
    iii) A mobility plan pursuant to s.163.3180

CS/SB 1348 (Sen. Perry), which contains language regarding the petition discussed above, was reported favorably by the Senate Rules Committee, its last committee of reference, on March 1 and placed on the Senate Calendar on Second Reading. The bill provides that a petition to establish a new community development district of less than 2,500 acres over land in one jurisdiction may identify significantly contiguous parcels that the petitioner expects to add to the district's boundaries within the next 10 years. Specific information regarding these parcels is required and no parcel can be included in the petition without the written consent of the landowner. The bill also includes a process for amending the district to include such a parcel. It does not include any of the other changes included in CS/CS/HB 883 E1 discussed above.

Regional Rural Development Grants: CS/CS/SB 1646 (Sen. Montford), which make changes to the Regional Rural Development Grant Program and the Rural Infrastructure Fund program, was reported favorably by the Senate Appropriations Committee, its last committee of reference, on March 2.

CS/CS/HB 1103 (Rep. Albritton), a similar bill, has been placed on the House Calendar on Second Reading.

Environmental/Natural Lands:

Coastal Management*:* CS/SB 174 was passed by the Senate on March 1. The bill amends s.161.101(14), F.S., to revise the beach management project funding criteria and requires the Department of Environmental Protection (DEP) to adopt by rule a four-tiered scoring system to determine annual funding priorities. The bill revises the inlet management project funding criteria and requires that projects considered for funding under the inlet management program are to be considered separate and apart from projects reviewed and prioritized under the tiered structure for beach nourishment projects. The bill also requires a minimum distribution of the lesser of 7.6 percent of the funds remaining after the payment of debt service or $50 million to be appropriated annually from the Land Acquisition Trust Fund for projects that preserve and repair the state's beaches.

HB 131 (Rep. Peters), a similar bill, has not yet been heard in committee.

School Planning:

School District Accountability: CS/CS/SB 1804 (Sen. Stargel) increases fiscal accountability and expands fiscal transparency requirements for district school boards. The bill was reported favorably by the Senate Appropriations Committee, its second of three committees of reference, on Feb.27. On Feb. 28, the reference to the Rules Committee, the last committee of reference, was removed, and the bill was placed on the Calendar on Second Reading.

On March 2, the Senate withdrew committee assignments from the newly received CS/CS/CS/HB 1279 E1, substituted this bill for CS/CS/SB 1804 and placed CS/CS/CS/HB 1279 E1 on the calendar on Third Reading. Specifically, the bill:

- requires school boards to provide financial efficiency data and fiscal trend information;
- requires the Department of Education to develop a web-based tool that identifies schools and districts with high academic achievement based on per pupil expenditures;
- requires school boards to provide a full explanation of, and approve, any budget amendment at the boards' next public meeting.;
- requires school districts with revenues more than $500 million to employ an internal auditor and clarifies that the scope of the auditor shall not be restricted;
- requires school districts with low-ending fund balances to reduce administrative costs and other expenditures;
- requires districts with financial emergency conditions to withhold the salaries of certain superintendents and school board members until the emergency is addressed;
- requires an investigation of school districts who are unable to timely pay current debts and liabilities;
- clarifies that the Department of Education's Office of Inspector General must investigate allegations and reports of fraud and abuse from certain government officials;
- requires school districts with previous operational audit findings to initiate and complete corrective action within a certain period of time;
- prohibits appointed, along with elected superintendents, from lobbying school districts for a period of two years after vacating the position;
- aligns school board member salaries with beginning teacher salaries or the amount calculated by statute;
- requires prior school board approval for reimbursement of certain out-of-district travel expenses;
- authorizes the withholding of a portion of an employee's salary who owes a public financial disclosure fine;
- repeals s.1011.64, F.S., relating to school district minimum classroom expenditure requirements; and
- prohibits superintendents, along with school board members, from employing or appointing a relative to work under their direct supervision.

Taxes:

***Local Tax Referenda*:** CS/CS/SB 272 (Sen. Brandes), which would provide that a referendum to adopt or amend a local government discretionary sales surtax must be held at a general election and is effective upon becoming a law, was reported favorably by the Senate Appropriations Committee on March 2. The Senate Rules Committee, its last committee of reference, has no remaining scheduled meetings.

CS/CS/HB 317 (Rep. Ingoglia), a similar bill, was passed by the House on Jan. 31, received by the Senate on Feb. 8 and referred to four senate committees of reference.

Transportation Planning:

Bicycle/Pedestrian Planning*:* CS/CS/HB 1033 (Rep. Toledo) was passed by the house on March 1 and has been received by the senate. The bill creates s.341.851, F.S., relating to bicycle sharing. It establishes minimum standards relating to the operation of bicycle sharing companies in the state. The bill prohibits local governments from taking any action or adopting any law that is designed to limit or prevent any company engaged in the rental of bicycles from operating in its jurisdiction, as long as the company complies with the regulations governing similarly situated businesses. The bill specifically provides that local governments are not prohibited from:

- Entering into agreements with companies for the placement of docking stations on public land.
- Enforcing uniform traffic infractions pursuant to Chapter 316, F.S.

Additionally, the bill states that an airport or seaport is not prohibited from designating locations for staging, pickup, and other similar operations relating to bicycles at the airport or seaport.

CS/SB 1304 (Sen. Young), a similar bill, was not considered as scheduled during the Feb. 13 meeting of the Senate Community Affairs Committee, its second of three committees of reference. This committee's regularly scheduled meetings have ended.

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