



## MEMORANDUM

**RE:           Legislature, Special Session, November 2010**

**DATE:       November 29, 2010**

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The Florida Legislature convened for a Special Session in Tallahassee on November 16, 2010, with a mission. By the end of the day, legislators successfully overrode eight of Governor Charlie Christ's vetoes from the prior regular session by enacting into law seven bills and one budget item, by a vote of two-thirds of the House and Senate. They also adopted two new measures. The following summarizes the bills and budget items that were affected.

### **Veto overrides:**

#### **• HB 1565: Limits on Rulemaking Power of State Agencies**

The current rulemaking process has been criticized for allowing agencies to adopt rules that create significant fiscal impacts on small business and increase bureaucracy in ways unintended by the Legislature. The Legislature responded by passing HB 1565 to establish new limitations on agency rulemaking powers.

Under the new legislation, which amends certain provisions of Chapter 120, Florida Statutes, state agencies are required to prepare a "statement of estimated regulatory costs" of the proposed rule if it is likely to increase regulatory costs by more than \$200,000 in the state within one year after implementation; or is likely to have an adverse impact on businesses, or economic growth, or regulatory costs by more than \$1 million within five years of implementation. Any agency rules exceeding these limitations must be ratified by the Legislature. Failure of an agency to provide a statement of estimated regulatory costs, or to respond to a written lower cost regulatory alternative, is considered a "material failure" to follow the rulemaking process and may be challenged by a person whose substantial interests are affected if raised in a petition within one year after the effective date of the rule. Even if a cost statement is filed by the agency, a substantially affected person may challenge the validity of the proposed rule within 44 days after the statement has been prepared and made available to the public.

HB 1565 also affects the licensing statute (Section 120.60, Florida Statutes) to allow agencies to establish rules setting the time period for applicants to submit any additional information as requested by the agency. Significantly, agencies must grant a request for an extension of time to submit additional information for good cause shown. If an applicant believes an agency's request for additional information is not authorized by law or rule, the agency must, at applicant's request, proceed with the application process.

In vetoing the bill, the Governor cited concerns about encroachment on the principle of separation of powers. However, according to the bill's supporters, the current rulemaking process has allowed state agencies to adopt rules that increase bureaucracy and create significant fiscal impacts on small businesses at a time when businesses are already suffering from the economic downturn.

• **Budget veto for Shands Teaching Hospital**

A \$9.7 million budgetary appropriation for Shands Teaching Hospital in Gainesville was vetoed by the Governor in May 2010. By overriding the veto, the funds will be restored pursuant to the General Appropriations Act for Shands to provide charity care, inpatient psychiatric care, trauma care and burn care to the poor. Additionally, the \$9.7 state funding generates more than \$17 million in federal funds for the state that are lost without these matching funds.

• **HB 545: Caveat emptor in hurricane zones**

HB 545 repeals a statute that would have required homeowners -- beginning January 1, 2011 -- to disclose a "windstorm mitigation rating" when selling a house along Florida coastlines. Counties affected by this law include: Pinellas, Escambia, Santa Rosa, Bay, Gulf, Franklin, Sarasota, Lee, Collier, Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River and Brevard. The Governor vetoed HB 545, stating that the "consumer-friendly law" would have helped Floridians seeking the right home for their needs. Supporters of the bill believed that the new law would cause home sales in those coastal areas to be delayed, discouraged or prevented and was an additional burden on the seller.

• **CS/CS/SB 1842: Median hearings**

This bill requires the Florida Department of Transportation to notify affected property owners and local governments, within 180 days before finalization of project design, of all plans to erect a highway median barrier that affects access by turning vehicles, or otherwise modifies existing access to the property. In addition, the bill requires FDOT to hold at least one public hearing in the jurisdiction where the project is located and receive public input. Supporters state this bill

helps businesses impacted by FDOT projects and do not currently have the opportunity to relay concerns regarding the project's impact during the design phase.

The Governor, in vetoing the bill, cited "confusion" by duplicating existing processes for public notice and hearings and applying only to modifications of access. Furthermore, important safety projects should not be subjected to unnecessary delays.

• **HB 569: Trash heaps**

This bill allows for the disposal and collection of yard trash in Class 1 landfills instead of the current requirement of having yard waste and household waste to be collected separately. Supporters cite to a significant reduction in the expenditure of public funds and effects of limiting the production of landfill gas and alternative fuel at Class 1 facilities. The Governor expressed concerns that the bill was a "step backward in our recycling efforts" and vetoed the bill.

• **HB 981: Greenbelts**

Following a ruling by the Circuit Court of the Eighth Judicial Circuit, farmers who offer their property for sale are at risk of losing their agricultural classification and having to pay higher property taxes even though the land continues to be used primarily for a bona fide agricultural purpose. HB 981 provides that offering a property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used for agricultural purposes while it is being offered for sale. In addition, the bill allows for structures or improvements used in horticultural production for frost or freeze protection to be assessed by the existing income methodology approach. The bill also permits the Fish and Wildlife Conservation Commission to enter into an agreement with the FDEP for the uniform regulation of pesticides applied to Florida waters and allows the use of pesticides approved for a particular use by the EPA even if such use deviates from the acute toxicity provisions of the FDEP's rule establishing surface water quality standards.

• **HB 1385: Petroleum site cleanup**

This bill prohibits local governments from denying a building permit based solely on the presence of petroleum contamination for any construction, repairs or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility. It also requires the FDEP to evaluate whether monitoring facilities under the Petroleum Cleanup Program is cost-effective and will adequately protect the public health and the environment, and allows the FDEP to establish a category for sites where the effects of petroleum contamination will reduce naturally over time.

• **SB 1516: State-owned lands**

SB 1516 requires the Florida Department of Management Services (FDMS) to create a database to track how much land the state owns and the FDEP to maintain the database to include an inventory of all real property leased, owned, rented, occupied or managed by the state. The FDEP is also required to submit a feasibility study for the Lands Inventory Tracking System (LITS) and to submit an annual report that lists the state-owned real property recommended for disposition and implement a “project governance structure.”

The Governor vetoed this bill because the new responsibilities would blur the natural resource protections mission of the agency and impose increased responsibilities that fall outside of that mission.

• **SB 6A: Energy rebates**

This bill allocates \$31.4 million of the state’s federal stimulus money to fund rebates to people who bought qualified HVAC high-efficiency heating and air conditioning units as well as solar energy systems. Applicants must submit a Florida Energy Star Residential HVAC Rebate Program application to the Florida Energy & Climate Commission by November 30, 2010.

**New legislation:**

• **SB 24 Septic Tank Postponement**

Responding to concerns relating to the Septic Tank Evaluation Program and the associated costs to property owners, the Legislature passed SB 24 to delay enforcement of the new septic tank inspections requirements from January 1, 2011, to July 1, 2011.

• **SM 4A: Memorial to Congress on Medicaid reform**

This memorial is a message to Congress addressing concerns about the federal Patient Protection and Affordable Care Act (PPACA) and its effects on the state of Florida. It urges Congress to amend the Social Security Act in order to re-establish a federal-state partnership that respects the constitutional requirements and fiscal constraints of each government to allow states to provide cost-effective health care services to low-income residents. It also outlines alternatives to the PPACA for improving Medicaid in the state, such as expanding the Medicaid managed care pilot program statewide and improving access for participants.

If you have any questions concerning these bills passed during the Special Session of the Florida Legislature, please do not hesitate to contact one of our attorneys.