

we deliver creative and effective business solutions and counsel

BERGER SINGERMAN

attorneys at law



GOVERNMENT & REGULATORY ALERT

April 2008

2008 Legislative Update

Berger Singerman's Government & Regulatory Team

is following developing legislation this Session that we deem to be relevant to our clients. As a service to its clients and colleagues, the firm shares this Mid-Session Legislative Update, which provides a general overview of some of significant bills that are relevant to the following industries and areas of law:

(click on each topic below to navigate to that section)

AGRICULTURE

ENVIRONMENTAL

REAL ESTATE

CONSTRUCTION

HOMEOWNERS ASSOCIATIONS

FINANCIAL SERVICES

INSURANCE

BANKRUPTCY

INFORMATION TECHNOLOGY

MANUFACTURING

ENERGY

HEALTH/PHARMACEUTICAL

HOSPITALITY

NOTE: This Legislative Update is based on information as of March 28, 2008 and is subject to change in the upcoming weeks of the session. For the last word on the 2008 Legislative Session, watch for Berger Singerman's 2008 Legislative Update which will be sent out at the conclusion of the 2008 Session.

General Tone in Week 4

The budget is still underpinning most legislative developments, as agreement seems to have been reached not to use the Budget Stabilization Trust Fund to plug holes in the revenue shortfall, but the parties differ on how to make up the difference in numerous budget items. The Senate and House are both working on budgets that include hundreds of millions in health care cuts. The final versions of each chamber's budget are expected to be ready for the full House and Senate to debate the first week in April. Democrats in both Chambers held press conferences March 27, 2008 to suggest that cuts to public education and health and human service budgets should not be made when tax cuts could be rescinded in some areas, or some tax revenues could be increased to make up the difference in key items.

Budget Overview

Proposals were released by leaders in both chambers, where the House has failed to fund many items across all categories that are normally carry-through items, such as funding for Everglades restoration and other federal match items. In health spending, the House proposal suggests that county health departments would see their budgets slashed nearly in half, cutting \$55.8 million when federal matching money

is factored in. Both the Senate and House are proposing actual reductions in the amount of per-student spending in K-12 education, something that hasn't happened in nearly four decades. Public higher education would emerge largely unscathed or doing better in both chambers. Universities would have their funding cut by half a percent or \$17 million. But community college budgets would increase by \$17 million, or 1 percent, under the House plan. The Senate version would cut both by 1.6 percent.

The Senate cuts call for deep reductions in hundreds of health and social-services programs, where adult hearing and dental services would be eliminated, as well as cuts to county public-health departments. In addition, the Department of Children & Families would lose as many as 71 investigators, part of a 724-position cut that also includes more than 200 who assist families at DCF service centers. The Senate plan would also slash payments to hospitals, nursing homes and HMOs that could be forced to play an even bigger role in providing emergency care. The 6.5 percent payment cuts outlined by the Senate Health and Human Services budget panel would cost hospitals alone \$200 million. A Senate plan would increase various court fees, which have been unchanged for the past decade, by 10 percent. That would avoid the need to lay off court personnel. The

state's prison system, though, could lose up to 2,200 positions, although some are vacant and others held by part-time or temporary workers.

Overall, the Legislature is expected to cut just under \$2 billion from its \$70 billion budget before agreement is reached. All Appropriations Proposed Committee Bills and implementing bills are scheduled to be heard by their respective committees on Wednesday, April 2, 2008.



AGRICULTURE

The agriculture industry bills were continuing to move through the committee process until the Senate version was tripped up by an additional committee reference the week of March 31. The fact that the Department of Agriculture and Consumer Services did not submit a department package may influence the outcome of these bills.

HB 761

This bill picks up most of the agriculture industry package Senate Bill (SB 2060), which may be in trouble as it was referred to Regulated Industries the week of March 24 without being placed on an agenda. HB 761 prohibits counties from imposing a tax, assessment, or fee for stormwater management on land classified as agricultural if the agricultural operation has an agricultural discharge permit or implements best management practices (BMPs). The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations. The bill passed unanimously as a committee substitute (CS) by Environment & Natural Resources Council and was discussed during the Revenue

Estimating Conference on March 28 due to its impact on local business tax receipts.

Status

HB 761 should now head to the House Floor, where it should tie in with SB 2060.

HB1 173

Land Development Regulation - This bill allows for densities, along with land uses and intensities of use, consistent with surrounding uses to be included in a comprehensive plan amendment (CPA) submitted by a landowner of an agricultural enclave. The bill also prohibits a local government from limiting land uses, densities and intensities of use consistent with uses, densities and intensities of use of the industrial, commercial or residential areas that surround the parcel to a distance equal to within three miles of the parcel.

If a local government imposes development conditions preventing the owner of an agricultural enclave from achieving densities and intensities of use consistent with the surrounding areas described above, the owner may apply to the circuit court for appropriate relief pursuant to the Bert Harris Act. The imposition of such conditions is presumed to impose an inordinate burden. This presumption may be rebutted by clear and convincing evidence. The bill also provides that once the Department of Community Affairs (DCA) has reviewed the CPA, the owner of an agricultural enclave shall respond to objections, recommendations or comments (ORCs) issued by the DCA.

Status

HB 1173 is seen as controversial, having failed (as SB 2246) in

the Senate and was temporarily postponed on March 26 by the House Environment & Natural Resources Council after its hearing. It is pending reconsideration.

SB 310

Biomass Energy Production: This CS has not moved since another committee reference was added on March 11 (Finance and Tax). This proposed committee substitute (PCS) amends procedures for claiming the sales tax exemption for the purchase of equipment, machinery, and other materials used in renewable energy technology and it raises the annual limit on the amount of refunds from \$1 million to \$2 million. It provides for the transfer of the investment tax credit for renewable energy technologies investments. It amends provisions regarding Florida renewable energy production credits. The PCS renews the "Farm-To-Fuel Grants" program which provides matching grants for bioenergy projects. It establishes incentive programs for biofuel retail sales and production of biofuels from biomass produced in the state. This PCS substantially amends the following sections of the Florida Statutes: 212.08(7), 220.192, and 220.193, and creates the following sections of the Florida Statutes: 570.956, 570.958, and 570.959.



ENVIRONMENTAL

Many major environmental packages were heard on the week of March 24, Bills on energy, land conservation and springs protection were heard and cleared many initial stops. In the environmental budget, there is no money recommended to fund this year's efforts for land conservation or Everglades restoration in the House.

HB 31

Springs Protection; HB 31 bill creates the Florida Springs Stewardship Act and the Florida Springs Stewardship Task Force. The bill defines the task force structure, function and membership and directs the task force, with assistance from all necessary state agencies, to collect and inventory all existing data and to identify zones of influence for each of Florida's first magnitude springs. The task force is also to identify and list best management practices (BMP's) for land uses in the zones of influence and to identify existing and potential sources of funding for implementing these BMP's. The task force is to solicit public input and testimony and propose a program of increased emphasis on education and outreach regarding implementing BMP's. The bill requires a report to the President of the Senate and the Speaker of the House of Representatives specifying the task force's findings. The bill requires the task force be appointed no later than August 1, 2008 and for the task force to expire on January 31, 2009.

Status

HB 31 was found favorable by Conservation & State Lands and is now in Environment & Natural Resources Council.

SB 2394

Protection of Springs; Creates the Florida Springs Protection Act, provides legislative intent on the importance of springs in the state, and establishes definitions. The bill establishes a pilot program for Silver Springs and Rainbow Spring in Marion County and directs the Department of Environmental Protection (department) to establish total maximum daily loads (TMDL) and develop basin management

action plans (BMAP) by dates certain. The bill establishes treatment levels for wastewater disposal within areas specified in the pilot program, requires landowners to connect to a wastewater utility, when available, unless meeting specific provisions as determined by the Department of Health, and requires the Department of Agriculture and Consumer Services to adopt best management practices within the areas specified in the pilot program. Additionally, the bill requires that local governments, within the areas specified in the pilot program, develop and adopt a springs protection element in their comprehensive plans as part of their normal comprehensive planning process. Finally, the bill requires that the department, the Department of Agriculture and Consumer Services, the St. Johns River Water Management District, and the Southwest Florida Water Management District assess nitrogen loading on lands owned or managed by each respective agency located with the areas specific in the pilot program and develop and implement management plans to reduce nutrient impacts to springs.

Status

An amendment adopted in the Senate Environmental Preservation committee on March 27, 2008 added the Florida Springs Stewardship Task Force language form the House bill and the bill passed as a CS. The Senate bill has three more stops.

SB 1208

Water pollution control; amending s. 403.067; providing requirements for basin management action plans; allowing such plans to take into account the benefits of pollutant load reduction achieved by point or nonpoint sources, where appropriate; requiring that the Department of

Environmental Protection adopt all or part of any such plan, or any amendment thereto, by secretarial order as provided by state law; providing that the provisions of the department's rule relating to the equitable abatement of pollutants into surface waters may not be applied to water bodies or water body segments for which a basin management plan that takes into account future or new expanded activities or discharges has been adopted; authorizes water quality protection programs to include the trading of water quality credits; authorizing the department to adopt rules related to the trading of water quality credits; requires that such rulemaking include certain provisions; specifying that a water quality credit trading pilot project be limited to the Lower St. Johns River Basin as a pilot project; requiring that the department provide the Legislature with an annual report regarding the effectiveness of the pilot project; providing report requirements; providing that the department may authorize and establish specific requirements for water quality credit trading as part of the Lower St. Johns River Basin adopted basin management action plan; correcting cross-references to conform to changes made by the act; amending s. 403.088; authorizing the department to revise a water pollution operation permit under certain circumstances; authorizing the department to issue, renew, or reissue such a permit if a water quality credit trade meets the requirements of s. 403.067; requiring that revised permits be accompanied by an order establishing a schedule for achieving compliance with all permit conditions.

Status

SB 1208 passed as a CS by Environmental Preservation and

Conservation on March 27 and now moves to Community Affairs. Its House companion, HB 547 has been placed on the House Calendar on Second Reading.

HB 37

Contracting for Efficiency or Conservation Measures by State Agencies; CS/HB 37 amends the Guaranteed Energy Performance Savings Contracting Act by expanding the authority of state agencies, municipalities, or political subdivisions to contract for water and wastewater efficiency and conservation measures. The Act currently permits agencies to enter into a guaranteed energy performance savings contracts merely based upon energy savings, under specified circumstances. specifically, the bill makes the following changes to current statutory law: Adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act; Adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies; Expands the express list of conservation measures that may be contemplated; Adds water and wastewater efficiency and conservation measures to the law relating to consolidated financing of deferred-payment purchases, to conform to the changes in the bill; Provides rule-making authority for Department of Management Services to define experience qualifications for guaranteed performance savings contractors.

Status

The bill was filed as a CS on March 18 and may head to the House Floor.

SB 542

Florida Forever; SB 542 is a non-regulatory land conservation bill renewing and extending the Florida Forever willing-seller land preservation program for another 10 years. Additionally, the bill creates new opportunities for rural agricultural land conservation easements and increased access for public recreation on conservation lands.

Status

SB 542 was work-shopped in the Senate Environmental Preservation committee and will pass out the week of March 31. Its House companion, PCB ENRC 08-09 passed out of the House Conservation and State Lands committee with a number of differences, and is now in the Environment and Natural Resources Council.

SB 2406

Aggregate Mining; Prohibits local governments from enacting or enforcing ordinances, resolutions, regulations, rules, policies, or other actions that prohibit mining in certain lands zoned for mining; Provides an expedited permitting process for certain limerock environmental resource permitting and reclamation applications, etc.

Status

Referred to Environmental Preservation and Conservation; Community Affairs and General Government Appropriations.



REAL ESTATE

March 25 and March 26 were "Great Realtor Days" at the Capitol, where dozens of realtors (in past years

there have been hundreds) met with their legislative delegates to discuss the current housing slump. Of particular interest was a report issued noting that in every market in Florida—except Sarasota-Bradenton, which posted a 4-percent increase—real estate sales were down by nearly a third from its sales pace at the start of 2007. Another item realtors brought to their legislators was the cap on the affordable housing trust funds. The trust funds were set up in 1992 to support housing assistance programs and are funded by documentary tax stamp revenues, in order to ensure that the fund expanded with the state's population. But the affordable housing funds have not been fully funded since FY 2000-03 and is now capped by law at \$243 million, which is about half of what it's taking in even with a slow real estate market.

Realtors contend that the funds are a way the public and private sectors can work together to get the housing market moving again. Because the housing downturn has pushed the price of a single-family home back to where it's affordable for working families, the trust fund could provide down-payment assistance to help bridge any remaining gaps between buyers. Realtors and affordable housing advocates alike argued against any further raids on the already-capped funds, and also asked for restored funding.

HB 601

Department of Business and Professional Regulation: Omnibus DBPR bill changing the name of Division of Florida Land Sales, Condominiums, & Mobile Homes to Division of Florida Condominiums, Timeshares, & Mobile Homes; repeals most of ch. 498, but transfers some provisions to or incorporates some provisions in ch.

718, including language on trust fund, division powers & duties, civil penalties, court costs, investigative powers, etc.; transfers jurisdiction over fraudulent acts under ch. 498, to ch. 501 for handling as unfair & deceptive trade practices; removes farm labor contractor filing of fingerprint requirement; authorizes DBPR to approve, close, & terminate certain professional license applications under certain conditions; repeals requirement for real estate schools to submit rosters to DBPR; revises requirements for electrical & alarm systems contractor exams & certifications; adds amateur mixed martial arts to amateur sports governed by Florida State Boxing Commission & removes prohibition of such matches; requires filing fee for amendments to prospectus disclosure documents for rental of mobile home lots.

Status

The bill is on the Council agenda in the Jobs & Entrepreneurship Council on 04/01/08.

SB9 92

Foreclosure Fraud; Prohibits a foreclosure-rescue consultant from engaging in certain acts or failing to perform contracted services; Requires that all agreements for foreclosure-related rescue services and foreclosure-rescue transactions be in writing. Requires that an equity purchaser verify the homeowner's ability to make payments under a repurchase agreement; Provides price limitations for repurchase transactions, etc.

Status

Now committee on Judiciary but not on an agenda.

SB 1116

Mortgage fraud; creating s. 193.133, F.S.; requiring law

enforcement agencies to notify property appraisers of incidents of mortgage fraud; authorizing property appraisers to reconsider property assessments under certain circumstances; amending s. 817.545, F.S.; increasing penalties for certain types of mortgage fraud; Effective date July 1, 2008.

Status

The bill is now a CS favorable by Criminal Justice and is on the committee agenda in Judiciary for 04/01/08.

HB 743

Mortgage Fraud; This bill creates s. 193.133, F.S., to require that upon the finding of probable cause of any person for the crime of mortgage or other real property fraud that has the potential to artificially inflate property values, the arresting agency is required to promptly notify the property appraiser of the county in which such property or properties are located. The property appraiser may use the information to adjust the assessment of the affected property. Upon a conviction of fraud the property appraiser shall, if necessary, reassess the properties affected by such fraud. The bill specifies that if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, the notification may be postponed. Also, the bill increases the criminal penalty for mortgage fraud from a third degree felony to a second degree felony if the loan value used in the mortgage lending process exceeds \$100,000.

Status

The bill passed the House by a vote of 111-0 and is waiting on its Senate companion, SB 1116, which is on the Committee agenda in Judiciary on 04/01/08.

HB 391

Real Estate Conveyances; Bill was substantially amended from its original form. As a CS having passed its committees of reference, the bill will next be heard on the House Floor, where it was placed on the 2nd Reading Calendar in the first week of March but has not moved since. HB 391 Provides that specified transfer fee covenants are unenforceable against subsequent owners, purchasers, & mortgagees; provides that presumption is not created in favor of transfer fee covenants recorded before effective date of act; expands authority of corporations to execute instruments relating to interests in lands; authorizes corporations to execute conveyances in accordance with specified requirements.

HB 937

Title Insurance: Creates Florida 2008 Title Insurance Study Advisory Council; provides for council membership, administrative support, & responsibilities; authorizes council to invite independent actuaries to provide information; authorizes payment of fees; provides council meeting requirements; requires council to report to Governor & Legislature; provides for future termination of council. Effective Date: July 1, 2008.

Status

HB 937 is now in the Jobs & Entrepreneurship Council. On March 27, its companion, SB 1684 was Temporarily Postponed by the committee on Governmental Operations.

SB 698

Corporations; Revises provisions relating to articles of mergers and certificates of conversion for domestic corporations, limited

liability corporations, not for profit corporations, and partnerships; Includes a corporation within the definition of "other business entity" or "another business entity" as it relates to limited liability companies; Provides that the expulsion of a limited partner requires the consent of all the other limited partners, etc.

Status

On Committee agenda - Judiciary, 04/01/08 (not heard on 3/25). Its companion, Committee Substitute (C1) 419 has been placed on Calendar, on second reading in the House.



CONSTRUCTION

Due to an accident on a construction site in Miami the week of March 31 where two workers were killed and another five were injured, a bill now moving through the House may require licensing or regulation of tower cranes or crane operators in Florida. The Miami accident came 10 days after a 20-story crane toppled at a New York construction site, killing seven people, and follows a 2006 fatal crane accident in Miami-Dade County that prompted a local ordinance that increases inspections and safety measures for lifting cranes.

HB 609

Tower Crane and Tower Crane Operator Certification: Provides certification requirements for tower cranes & tower crane operators; provides prohibitions & penalties; authorizes persons in training for certification to operate tower cranes under direct supervision of certified tower crane operator; provides rulemaking authority for DBPR; preempts regulation of tower cranes & tower crane operators to state.

Status

HB 608 is scheduled for the Jobs & Entrepreneurship Council meeting agenda on 04/01/08. Its Senate counterpart, SB 1316 is in the Community Affairs committee but is not on an agenda.

SB 1276

Educational Facilities Construction; Now a Proposed Committee Substitute amending s. 1013.45, F.S.; increasing the maximum authorized amount of a day-labor contract to \$300,000; amending s. 1013.64, F.S.; providing duties of the Office of Educational Facilities with respect to approving school district construction projects and assisting districts in developing lists of proposed facilities; limiting total project costs except for providential causes.

Status

Bill unanimously passed Education Facilities Appropriations on 03/25/08 and became a second CS. SB 1276 has a House companion, HB 871, by Kreegel, which has been referred to Committee on Education Innovation & Career Preparation by Schools & Learning Council. SB 1276 has been placed on the Senate Special Order Calendar for 04/02/08.

HB 871

Educational Facilities Contracting and Construction Procedures: Increases maximum contract costs for day labor; provides for annual adjustments.

Status

On 3/26/08, its referral was revoked from Committee on Education Innovation & Career Preparation by Schools & Learning Council. Now

in Schools & Learning Council. On March 26, its companion, SB 1276 was placed on Special Order Calendar for 04/02/08.

SB 560

Energy Efficiency and Conservation; revises provisions authorizing the use of solar collectors and other energy devices; revises requirements for the future land use element of a local comprehensive plan to include energy-efficient land use patterns.

Status

Bill is in Senate Environmental Preservation and Conservation but was not heard the week of March 24.

SB 1554

Firesafety/Structure Markings; Requires the owner of any commercial or industrial structure, or any multiunit residential structure of three units or more, that uses truss-type construction to mark the structure with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss-type construction in the structure, etc. Favorable with 1 Amendment by Banking and Insurance.

Status

In Community Affairs but not on agenda.

SB 2664

Construction Lien Law; Deletes a requirement that the notice of commencement state the period that the notice is effective if it exceeds one year. Deletes a limitation on making payments after the expiration of the notice of commencement. Deletes a requirement that the improvement be commenced within

90 days after recording the notice of commencement. Amends a specified provision relating to the transfer of liens, etc.

Status

Referred on March 20 to committees on Regulated Industries and Judiciary and has not moved.



HOMEOWNERS ASSOCIATIONS

A new report by the bipartisan House Select Commission on Condominium & Homeowner Association Governance could lead to extensive changes in state laws protecting millions of owners in Florida condo and homeowner association communities. Recommendations range from requiring local police departments to investigate cases alleging fraud by directors to mandatory education for all condo directors. Also included are suggestions for regulating homeowner associations for the first time and providing more money for the Department of Business & Professional Regulation and the state condo ombudsman so they can provide better service. Additionally, suggestions would forbid associations with revenues of more than \$100,000 from waiving outside review of their books for more than two years and would require the state to subpoena books and records of associations that fail to let two separate owners see them on two separate occasions.

HB 921

Many, but not all, homeowners' associations may impose regular assessments that are a lien against each parcel, and that may be foreclosed upon if not paid. As to the lien of an association, and foreclosure

thereof, this bill: Provides forms and procedures for notice of a claim by a homeowners' association and an objection to such a claim. The filing of an objection obligates the association to foreclose the lien within 90 days or, failing that, to waive the right to foreclose on that lien. Provides that the holder of a first mortgage who forecloses on the mortgage is liable for up to six months assessments or 1% of the mortgage amount, whichever is less, in past due assessments. Gives further direction and a form for use in qualifying offers, which are a means for an owner to forestall foreclosure of an association lien in exchange for an agreement to pay the outstanding balance by a certain date. This bill may require individuals as the first mortgage lienholder to pay association assessments after foreclosure.

Status

HB 921 was found favorable by Courts; 6 Yeas, 0 Nays; Now in Safety & Security Council and its companion, HB 1986 is on the Committee agenda in Judiciary on 04/01/08.



FINANCIAL SERVICES

Financial services industries reported job losses in South Florida in February, the Agency for Workforce Innovation reported on the week of March 31. U.S. home foreclosure filings jumped 60 percent and bank seizures more than doubled in February as rates on adjustable mortgages rose and property owners were unable to sell or refinance amid falling prices.

SB 2788

Tax Administration; Reviser's bill that revises the time for commencing actions to contest a tax matter in at least five chapters of Florida

tax code; Revises the list of tax-related forms that a taxpayer has a right to keep confidential; Revises provisions relating to the filing of tax returns resulting from the sale of real property; Provides penalties for knowingly failing to collect taxes due; Revises provisions relating to the tax exemption for building materials used to rehabilitate real property in enterprise zones, etc. Effective upon becoming law except as otherwise provided. HB 2788 was amended eight times in committee on March 25 by the bill's sponsor, Mike Haridopolos.

Status

The bill is on Committee agenda for Finance and Tax, 04/02/08 (it was Temporarily Passed on 03/26/08) but still has no House companion.

HB 435

Fiduciaries; Amends Ch. 736. Bill creates a new section of law to provide that communications between a fiduciary who administers fiduciary property and a lawyer are privileged (identical to the existing attorney/client privilege).

Status

The bill passed as a CS on March 24 and has been placed on the House Calendar, on second reading. Its companion, SB 2164 was filed as a Committee Substitute (C1) on 03/27/08 and is now in Banking and Insurance.



INSURANCE

The House Insurance Committee held a hearing Monday aimed at building support to reverse last year's legislation, saying there are deep flaws in the sweeping property insurance law they passed almost unanimously to help lower homeowner insurance rates. Among

other changes, the 2007 legislation expanded the Florida Hurricane Catastrophe Fund by \$12 billion to offer insurers cheaper reinsurance, or backup coverage, and rescinded rate hikes of 21 percent and 56 percent for Citizens Properties Insurance Corporation, the public property insurer that has become the state's largest.

The legislative package helped lower homeowner rates by a statewide average of about 15 percent. But House insurance committee members say in hindsight, the savings won't be worth the financial risk if a major hurricane strikes, wipes out state funds and leaves almost all Florida homeowners to foot the bill. They support scaling back the catastrophe fund and oppose extending Citizens' rate freeze beyond its Jan. 1, 2009 expiration.

SB 2156

Florida Hurricane Catastrophe Fund; Amends chapters 215 and 627 to create the Division of the Florida Hurricane Catastrophe Fund as a division of the State Board of Administration; Requires that the division enter into a contract with each insurer writing covered policies in this state to provide to the insurer reimbursement as prescribed by state law. Requires that the division publish certain information in the Florida Administrative Weekly at specified times, etc. Reference to Finance and Tax removed; Remaining references: Governmental Operations; General Government Appropriations.

Status

Now in Governmental Operations.

SB 2306

Residential Property Insurance/Mitigation Discount; SB 2306

amends s. 627.028 to require that the Office of Insurance Regulation develop and make publicly available before a specified deadline a proposed method for insurers to establish windstorm mitigation premium discounts that correlate to the uniform home rating scale; Requires insurers to make rate filings pursuant to such method, etc.

Status

The bill was not considered in Committee for Banking and Insurance on 03/25/08.

SB 2076

Arbitration; Provides that the Florida Arbitration Code does not apply to certain insurance policies. Provides that mandatory binding arbitration is void and unenforceable except as provided by federal law; Provides that a financial or personal interest in the outcome of a proceeding or an existing or past relationship with a party constitutes grounds for removal of the arbitrator, etc.

Status

On Committee agenda - Commerce, 04/01/08.



BANKRUPTCY

According to a recently released report from the Clerk of the Middle District of Florida, the MDFL is the sixth busiest bankruptcy court (out of 90 courts) in the nation, where bankruptcy filings in the MDFL rose 70% in 2007.

SB 2214

Mortgage Rescue Fraud Act; SB 2214 was Temporarily Postponed by Senate Banking and Insurance the week of March 24, but its House companion, HB 643 Relating to Foreclosure Fraud by Ford was

passed unanimously on the House floor with one amendment on March 26. The HB provides legislative findings & intent relating to need to protect homeowners who enter into agreements designed to save homes from foreclosure. The strike-all amendment: Expands the definition of "equity purchaser" to include persons who acquire a legal, equitable, or beneficial ownership interest in any real estate property, as a result of a foreclosure through other means, i.e. trust purchases. The exclusions applicable to acquiring title are expanded by the amendment to include legal, equitable, or beneficial interest by methods listed in the amendment; Removes from the definition of "residential real property in foreclosure" the service of process requirement and the 90-day delinquency on a property loan requirement; Narrows the exemptions for entities that are considered a "foreclosure-rescue consultant" by removing lawyers, real estate brokers, and mortgage brokers; Clarifies the term "foreclosure-rescue transaction" to include a "lease option interest" as a form of conveyance; Replaces "24 hour" references with "1 business day." Also adds "restructuring" to the Homeowner's Right of Cancellation notice as a recommendation that a homeowner pursues with his/her lender as a possible free of charge service; Adds a 5:00 p.m. deadline for notice to an equity purchaser of cancellation; Considers unconscionable a repurchase price that is greater than 17% per annum more than the total amount paid by the purchaser to acquire, improve, maintain, and hold the property; Changes effective date to October 1, 2008; Revises the definition of the term "foreclosure-rescue consultant" by deleting the term "affiliate" of a financial institution. Also, excludes from the definition of "foreclosure-rescue consultant" licensed

mortgage brokers and mortgage lenders who are performing within their scope of services as set forth in chapter 494 (Mortgage Brokerage and Mortgage Lending); Changes 5 day right of cancellation to 3 days for homeowners who sign a contract for foreclosure rescue services; Provides in event of cancellation, any moneys paid by the purchaser to the homeowner or by the homeowner to the purchaser must be returned at that time; Applies the existing recording provisions is s. 695.01, F.S., (Conveyances to be recorded) to the presumptions in the act.

Status

Bill is now Engrossed.



INFORMATION TECHNOLOGY

Driven by state support, the growing presence of major world class research institutes and other fuel, Florida is becoming a major player in the biotech and other high tech arenas. By 2006, Ernst & Young ranked Florida as a top ten state for biotechnology, although Enterprise Florida, the state's economic development agency, notes that the lines between the life sciences, biotech, pharma, medical devices and healthcare are blurring. Looking ahead, Enterprise Florida sees the state as particularly strong in areas where life sciences, information technology, nanotechnology, and other areas are converging. Florida has a number of business-friendly tax laws that many startups and large, established biotech and pharmaceutical firms alike consider attractive. It has no sales tax on R&D equipment, no state personal income tax, and no corporate income tax on limited partnerships, or subchapter S-Corporations, no sales tax on purchases of raw materials incorporated in a final product for resale, and others.

SB 1120

Research Commercialization Matching Grant Program; creates the Florida Research Commercialization Matching Grant Program, to increase the amount of federal grants awarded in Florida, and also help attract private investment in high-value, technology-based careers. Goal of the Florida Research Commercialization Matching Grant Program is to increase the amount of federal research grant money awarded to small businesses in the state. In doing so, Florida could see increases in the establishment and growth of technology firms in Florida, and additional technology-based jobs for the state. The Grant Program will make 20 to 30 awards each year, ranging up to \$250,000, amounting to \$5 million annually.

Status

SB 1120 is on the Committee agenda for Commerce on 04/01/08 and its House companion, HB593 is now in the House Economic Expansion and Infrastructure Council.



MANUFACTURING

Unemployment in Florida in February remained at its January rate of 4.6 percent. It was up nearly a percentage point compared to February 2007. The statewide rate remained at its highest point since October 2004, which was also 4.6 percent, according to seasonally adjusted statistics from the state Agency for Workforce Innovation. The unemployment rate for Florida in February was up 0.9 percent, compared to the 3.7 percent rate in February 2007. The state's nonagricultural growth rate was negative 0.3 percent, with a loss of about 27,700 jobs over the year, reducing the total employment to about 8.03 million. The

manufacturing industry lost about 22,200 jobs, which is a 5.6 percent decrease.

In the good news category, reports from economists and investors have helped Governor Crist advocate that Florida produce 20 percent of its power through renewable energy. The state is now at 2 percent. Ideas for greener power have had an incredible impact in energizing the renewable industry at a local level in other countries with production opening up potentially thousands of jobs in the renewable energy manufacturing sector. The green polices engender competition for renewable production and make incentives available for investment across many trades. As more renewables are built, the investors contend, economies of scale kick in. This reduces costs so that in future years the renewables prices for new entrants can be dropped. A flood of new investment can flow into Florida; with that investment will come local construction and manufacturing jobs that cannot be outsourced.

SB 1398

Research and Development Expenses Tax Credit; Provides a tax credit for any business or the headquarters of any business that is engaged in the manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development industries that has qualified research expenses; Provides this credit if such business claims and is allowed a research credit under s. 41 of the Internal Revenue Code for the same taxable year; Provides for the amount of the tax credit, the maximum amount of credit that may be claimed in any one tax year, the carry-forward of any unused credit, and the assignment or sale of any unused tax credits to another taxpayer under

certain conditions; Provides for the maximum credit amount that may be approved during any calendar year.

Status

Passed as a Committee Substitute in Commerce on March 26, and is now in Finance and Tax.



ENERGY

The Florida Municipal Power Agency, a wholesale power company representing 15 city-owned utilities, announced plans on the week of March 31 to partner with Atlanta-based Geoplasma in St. Lucie County. Taking garbage from the St. Lucie County landfill and using plasma arc technology, Geoplasma hopes to turn the garbage into gas, which in turn will generate electricity, ultimately enough for 40,000 homes. Officials hope the plant, the first of its kind in the United States, will be in operation by 2011. By joining with Geoplasma, the FMPA would be able to distribute electricity to its member plants and to demonstrate its efforts to use alternative and renewable energy sources, as being pushed by Florida Gov. Charlie Crist.

Floridians want more solar power, even if it costs a little more, according to a new state survey. High consumer demand has exhausted the state's solar rebate program fund six months early, and lawmakers and solar advocates on the week of March 24 released a new survey showing Florida residents overwhelmingly support spending more money on solar energy. The survey of 625 registered voters, conducted by Mason-Dixon Polling & Research, showed 85 percent believe the state Legislature should act to encourage investment in solar energy, and 81 percent said they support investment, even if it costs

\$1 extra on their monthly utility bills. The Florida Solar Energy System Incentives Program, which provides the rebates to residents and businesses on the purchase of solar equipment. Rebates were available for solar thermal swimming pool heaters, residential solar water heaters and commercial solar water heating systems. Some solar power panels or photovoltaic systems also qualified for a rebate. To meet public demand, Crist's 2008-09 budget proposal includes an additional \$10 million.

SB 1544

Energy Conservation; The omnibus energy bill has captured many of the provisions brought under numerous separate bills, which may account for the more than 50 amendments added since the bill was introduced. The week of March 24, a Committee Substitute was passed the Senate Committee on Environmental Preservation and Conservation and is analyzed below. This past Thursday, another 31 amendments were considered on the bill, some wrapped in by the CS and some others passed and some withdrawn. One of the most important provisions passed was the introduction, in legislation rather than in PSC policy, of a Renewable Standards Portfolio for Florida utilities. We will have a full analysis available the week of April 7 once more info is provided by the Senate.

The CS by Environmental Preservation Committee: Provides for telecommuting for employees of public employing entities; Provides that deed restrictions, covenants, declarations, or other similar binding agreements may not prohibit solar collectors or other energy devices based on renewable resources from being installed on buildings covered by such agreements, including condominiums; Provides

that the future land use element of local comprehensive plans must discourage urban sprawl and the transportation circulation element must address reductions in greenhouse gas emissions; Provides that any solar energy device added to a homestead shall not increase the taxable value of the property ; Provides that the sale or use of wind turbines is exempt from the sales tax up to \$1 million each fiscal year for all taxpayers; Increases the eligible costs relating to renewable energy technologies investment tax credits; Increases the limit of such tax credits per fiscal year from \$6.5 million to \$14 million; Provides that the board of trustees may delegate to the Secretary of Environmental Protection authority to grant certain easements on state lands for electric transmission and distribution lines, natural gas pipelines, or other linear facilities for which the PSC has determined a need exists or the Federal Energy Regulatory Commission has issued a Certificate of Public Convenience and Necessity; Provides that new and renovated state buildings strive to conform to certain green building standards; Clarifies the state's energy performance contracting process; Requires the DMS to develop a Florida Climate Friendly Preferred Products List; Allows the DMS to conduct an analysis of ethanol and biodiesel use by the DOT; Allows alternative and renewable energy projects to be eligible for innovation grants from the Office of Tourism, Trade, and Economic Development; Provides that DOT's rules shall provide for the placement of and access to certain electric utility transmission lines adjacent to and within the right-of-way of any DOT controlled public roads; Encourages each metropolitan planning organization to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce

greenhouse gas emissions; Requires the PSC to begin rulemaking requiring electric utilities to offset 20 percent of their annual load-growth through energy efficiency and conservation measures thereby constituting an energy-efficiency portfolio standard; Allows public utilities to recover certain redefined environmental compliance costs; Provides that a public utility may recover certain costs related to the construction and pre-construction of nuclear power facilities; Creates a new Florida Energy Commission in the Executive Office of the Governor; Allows public utilities to recover certain solar energy costs; Provides for the establishment of a cap-and-trade program to reduce greenhouse gas emissions; Provides for the siting of transmission facilities on state-owned lands under certain circumstances; Revises certain provisions of the Transmission Line Siting Act to streamline the act; Provides for an application fee for alternate transmission line corridors; Encourages counties to form regional solutions to the capture and reuse or sale of methane gas from landfills; Provides that after a certain date, all gasoline sold or offered for sale in Florida must contain at least 10 percent of an agriculturally derived, denatured ethanol fuel by volume; Requires the Florida Energy Commission to study lifecycle greenhouse gas emissions associated with all renewable fuels; Requires the Florida Building Commission to implement certain changes to the Florida Energy Efficiency Code for Building Construction; Requires the Florida Building Commission to implement a schedule of energy-efficiency goals and update the Florida Building Code; Requires the Florida Building Commission to conduct a study to evaluate the energy-efficiency rating of new buildings and appliances; Requires the Florida Building Commission to conduct a study to

evaluate opportunities to restructure the Florida Energy Efficiency Code for Building Construction to achieve long-range improvements to building energy performance; Requires the Department of Community Affairs to identify and review issues relating to the Low-Income Home Energy Assistance program and the Weatherization Assistance Program and identify certain recommendations; Requires the PSC to analyze utility revenue decoupling and provide a report and recommendations to the Governor, President of the Senate, and the Speaker of the House of Representatives; Allows condominium associations to install certain solar and other energy-efficient devices in the common areas; Creates the Florida Energy Systems Consortium within the State University System; Provides that as a condition for the issuance of certain grants to private companies for energy-related research, the DEP may require an agreement stipulating the return to the state of a percentage of certain proceeds or profits; Requires the DEP to conduct an economic impact analysis on the effects of granting financial incentives to energy producers who use woody biomass as fuel; Provides for a long-term solid waste recycling goal; Provides that when the Climate Protection Act rules are submitted to the Legislature for ratification, the DEP must also submit a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the costs and benefits of a cap and-trade system.



HEALTH/PHARMACEUTICAL

A bill before a Senate committee would cut in half the amount of money the Innovation Incentive Fund grant program invests in biotechnology companies and research centers. The 2-year-

old program has served as an investment bank for high-profile biotech institutes from California to set up shop in Florida. In the Senate bill (SB 2778), which has cleared the Senate Commerce Committee and is now before the Government Operations Committee, says that all future grant agreements would require that 10 to 15 percent of any royalties and naming rights from the research organization go to the state. And it would add oversight for other institutes that received money from the Innovation Incentive Fund to the Scripps Florida Funding Corp. in West Palm Beach.

Almost one in five individuals lacks health insurance in Florida and 69 percent of uninsured Floridians say they do not have insurance because their employers do not offer it. A just-released study by Families USA, a nonpartisan health-care advocacy organization, underscores the magnitude of the problem Florida is dealing with: According to the report, more than six people die in Florida every day for lack of health-care coverage. Legislation called the Small Business Health Care Insurance Assistance Pilot Program has been introduced in the House that would make it easier for small companies to offer their employees coverage.

HB 71

Establishes pilot program in Pasco & Volusia Counties to provide rebates to small businesses providing comprehensive major medical health insurance coverage for employees; requires employer & employee participation in costs; specifies amount of rebate; provides for additional eligibility for businesses; limits authorization to provide rebates under program pursuant to specific appropriation; provides for program administration by AHCA; provides enforcement &

audit authority for AHCA; provides for program funding from local governmental agencies & state matching funds.

Status

The bill is in the Healthcare Council.

SB 2618

Public Health; New committee substitute passed on March 19 to amend Ch. 381 limiting application of the environmental health program of the Department of Health to state institutions for the mentally ill rather than all institutions used for the incarceration of prisoners and inmates; Revising responsibilities of the Institutional Review Board; repealing s. 381.85, the Florida Biomedical and Social Research Act; repealing s. 381.895, relating to standards for compressed air used for recreational diving.

Status

The CS is still in Health and Human Services Appropriations. A House bill similar to SB 2618 is now filed as HB 7061 (formerly PCB HCC17). It is on the Council agenda for Policy & Budget Council on 04/01/08.



HOSPITALITY

Tourists generate sales tax revenues that fund government services - nearly \$4 billion in 2006. So it's understandable that tourism officials believe investing more money in promoting Florida will help boost

the sluggish economy. Their timing is just bad. Last year wasn't all good for the \$65 billion industry; the number of visitors was down nearly 2 percent from the previous year, the first decline since shortly after 9/11. About 82.4 million people visited Florida in 2007, compared to 83.9 million in 2006. Officials attribute the drop-off to high gasoline prices, though others blame the growing cost of hotel rooms. Crist wants \$10 million added to the state's tourism-promotion agency, Visit Florida, for the next fiscal year. If approved, the agency's public funding would jump from about \$33.3 million to more than \$43 million.

HB1109

Public Lodging and Public Food Service Establishments: Clarifies "public lodging establishment" definition; amends & creates other definitions; eliminates DHR requirement to assist State Fire Marshal update Florida Fire Prevention Code; eliminates requirement for DHR to enforce Florida Fire Prevention Code when it conducts inspections; revises state preemption provision; removes 90-day allowance for obtaining food service manager certification; eliminates requirement for transient establishment to keep copy of ch. 509, F.S., on premises; repeals provisions relating to public lodging establishment room rate posting & filing requirements, advertisement requirements, & related exemptions & penalties; eliminates DHR requirement to notify local fire safety officials or State Fire Marshal of

certain violations; separates sanitary regulations for public lodging & public food service establishments; requires public restroom requirements to comply with Florida Building Code as approved by local authority; clarifies public lodging establishment classifications; authorizes DHR to levy sanctions for noncompliance with final orders; authorizes DHR to require payment of outstanding fines before renewing or issuing license. Amendment by committee will change practice by regulators, who shall enforce the provisions of s. 509.092 that authorizes the operation of public food service establishments as private enterprises; however, the state shall be responsible for deciding that a food service operator licensed under this' chapter does not deny or prohibit services to a patron if the patron is using or in the possession of support equipment, including, but not limited to, oxygen support systems or equipment, service animals, infant carriages or baby strollers, wheelchairs, and crutches.

Status

Bill was found favorable with 4 amendments and is now a CS by Jobs & Entrepreneurship Council and next moves to the House floor. Its twin bill, SB 2016 was passed the Committee on Banking and Insurance and is now in Community Affairs. ■



GOVERNMENT & REGULATORY TEAM

Paul Figg	(954) 712-5104	pfigg@bergersingerman.com
Melanie Hines	(850) 521-6722	mhines@bergersingerman.com
Dawn Meyers	(954) 712-5147	dmeyers@bergersingerman.com
Gabe Nieto	(305) 714-4365	gnieto@bergersingerman.com
Kelly O'Keefe	(850) 521-6724	kokeefe@bergersingerman.com
Dan Pascale	(305) 714-4393	dpascale@bergersingerman.com
Sam Poole	(954) 627-9918	spoole@bergersingerman.com
Frank Scruggs	(954) 712-5164	fscruggs@bergersingerman.com
Jack Shawde	(305) 714-4366	jshawde@bergersingerman.com
Dan Thompson	(850) 521-6723	dthompson@bergersingerman.com