

ADMINISTRATIVE LAW ALERT

June 2007

2007 Legislative Update

Berger Singerman's

Administrative Law Team is keeping up to date with the newest legislation from the 2007 Legislative Session affecting the interests of our clients across the State. We also combined forces this session to pass legislation benefiting our clients.

As a service to our clients and colleagues, the Administrative Law Team shares the following legislative summary covering the leading *Environmental, Local Government and Real Property* issues addressed this session. We hope you find this information useful.

And watch for an update to this Legislative Summary following the Special Session addressing property tax reform, which runs from June 12-22, 2007. The issues addressed during that session will impact business and local governments, including cities, counties, municipalities and special taxing districts.

NOTE: This summary references some bills that are not yet signed by the Governor and may not take effect. Please refer to the STATUS line to confirm whether the bill is ENROLLED (not yet presented to the Governor); SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR (Governor has 15 days from date sent to veto the bill); or APPROVED.

ENVIRONMENTAL

CS/CS/HB 197 – Surface Water Protection Programs

This bill addresses discrepancies between the Northwest Florida Environmental Resource Permit (ERP) program and the rest of the state's ERP program to provide consistency with the state's ERP program. It ensures that state surface water quality standards do not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption under s. 373.4145, F.S., within the Northwest Florida Water Management District. It also eliminates the requirements that the SFWMD, prior to authorizing a discharge into works of the district, require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loading over that of existing land uses.

Affected Parties

Limestone Mining Companies
Peat Mining Companies
South Florida Water Management District

Northwest Florida Water Management District
Horticultural Industry
Agricultural Industry
Developers

Practical Effect

This bill will prevent the unintended consequence of having stormwater facilities in Northwest Florida subject to water quality standards and therefore unable to be permitted as stormwater facilities. It also amends s. 373.414, F.S., to ensure that the variance provisions of s. 403.201, F.S., are applicable to the NWF ERP program.

Status

ENROLLED 5/3/07



CS/CS/SB 392– Watershed Restoration

This bill amends 373.4595, F.S., known as the Lake Okeechobee Protection Act. The existing Phase II of the Lake Okeechobee Protection Plan is modified to require that the plan reflect the following: new measurements, additional detail on project schedules, an identification of additional types of projects to be considered, and

the creation of the Total Maximum Daily Load (TMDL) program. The bill creates two new water protection programs: one for the Caloosahatchee River watershed and the other for the St. Lucie River watershed. The bill extends the Save Our Everglades Trust Fund through Fiscal Year 2019-2020 and allows for the deposit and expenditure of funds related to the new protection programs. Additionally, it extends the South Florida Water Management district's match requirements for the life of the trust fund and allows funds to be distributed for implementation of the River Watershed Protection Plans and agricultural nonpoint source controls.

Affected Parties

South Florida Water Management District
Lee County
Martin County
Agricultural Industry
Developers

Practical Effect

This bill modifies the Lake Okeechobee Protection Plan and establishes watershed restoration programs for the St. Lucie and Caloosahatchee Rivers.

Status

ORDERED ENROLLED 5/2/07



CS/SB 1472 – Beach & Shore Preservation

This bill makes a series of changes involving the state's beach renourishment program. Specific provisions expand the definition of "access" or "public access" to include established accessways as those that must be retained for

public use. The bill also identifies specific criteria for the Department of Environmental Protection (DEP) to consider in issuing permits for dune restoration projects that incorporate geotextile containers or similar structures, and expands their ability to be used as a means of preventing damage to public and private property. Additionally, the bill directs that a sand source inventory be developed which identifies offshore sand sources.

Affected Parties

Beachfront Property Owners
Local Governments
Developers
Florida Department of Environmental Protection

Practical Effect

This bill gives property owners a proactive alternative to seawalls for preventing damage to their beach front property and insures, through a permit process implemented by DEP, that this alternative method meets criteria for preventing unnecessary disruption to the natural dune system. The bill also provides the method by which potential impacts to the upland owners would be valued in conjunction with a beach restoration project.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 5/31/07



CS/HB 7123 – Energy

The legislation provides a comprehensive approach to address alternative energy and energy efficiency measures by: encouraging the production and sale of alterna-

tive fuels; providing energy efficiency standards in government buildings; requiring the development of greenhouse gas inventories; incentivizing the use of solar energy; developing sustainable alternatives that promote environmental health; and establishing a Green Schools Pilot Program in three school districts.

Affected Parties

Producers and purchasers of renewable energy
LEED accredited professionals
The Florida Building Commission
The Florida Dept. of Environmental Protection

Practical Effect

The bill provides for a two-week Energy-Efficient Products Sales Tax Holiday and a one month Energy-Efficient Motor Vehicle Sales Tax Holiday. It also provides a renewable energy source exemption on real property in which solar energy is installed and operated after July 1, 2007. It further provides for transferability of a renewable energy technologies investment tax credit.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/5/07



LOCAL GOVERNMENT

CS/CS/HB 985 – Transportation and Infrastructure

This is a comprehensive transportation bill that addresses a variety of transportation financing, planning, and administrative

issues. Among its key provisions, the legislation addresses: public-private partnerships; metropolitan planning organizations; local governments; expressway and transportation authorities; and other transportation issues.

Affected Parties

Local Governments
Metropolitan Planning Organizations
Expressway and Transportation Authorities
Developers

Practical Effect

The bill provides for the implementation of Public-Private Partnerships to strengthen the state's transportation system by providing the Department of Transportation (DOT) with innovative financing techniques including public-private partnerships and leasing existing toll facilities. This will allow the DOT to enter into Public-Private Partnership agreements to develop new toll roads and exempts Public-Private Partnerships from traditional contracting requirements included in chapter 311, F.S.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/5/07



CS/HB 1491 – Community Development Districts

This bill makes many changes in Chapter 190. In part, it revises definitions relating to community development districts; specifies requirements for adoption of certain rules by the Fla. Land & Water Adjudicatory Commission;

revises provisions for determining certain voting units for landowners within a district; requires districts to publish notice of qualifying periods for elections; and revises timeframes and requirements for preparation of proposed district budgets.

Affected Parties

Community Development Districts
Developers

Practical Effect

This bill clarifies and amends the current law which sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/5/07



HB 7203 – Growth Management/Comprehensive Planning

The bill streamlines the state's growth management oversight in specific areas. For example, it creates a pilot program for state review of local comprehensive plans in urban areas in order to provide an alternative review process for densely developed areas. The bill makes several revisions to Part II of Chapter 163, F.S., relating to growth management and implementation issues related to SB 360 (enacted in 2005). In part, it amends the

transportation financing requirements imposed in SB 360 by clarifying that proportionate-share mitigation is limited to the impacts a development has on a transportation system and does not require the reduction or elimination of "transportation backlogs". Additionally, the bill allows local government's to meet the "financial feasibility" component of a Comprehensive Plan over time by providing that a local comprehensive plan is financially feasible for purposes of transportation and school concurrency if the adopted level-of service standards are achieved and maintained by the end of the appropriate planning period. The bill further provides that a comprehensive plan is financially feasible if, at a local government's discretion, a plan amendment is supported by a development-of-regional impact (DRI) development order condition or binding agreement that satisfies the statutory requirements for projects in certain areas.

The bill further amends the law controlling developments of regional impact. Specifically, it provides that all phase, build out, and expiration dates for projects that are DRIs and under active construction on July 1, 2007, are extended for three years. Additionally, it provides local governments and developers with the ability to enter into development agreements for up to 20 year periods.

Affected Parties

Local Governments
Developers

Practical Effect

Under SB 360, the FDOT required developers to spend money for “backlogged” road improvements that were caused by previous development and imposed extra costs on infill and redevelopment projects. This bill alleviates these costs by clarifying that proportionate-share mitigation is limited to only those impacts that a development has on a transportation system. In addition, the bill allows development to occur as long as it can be established that transportation and school concurrency will be met by the end of a capital improvement schedule planning period.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/5/07



REAL PROPERTY

CS/SB 314 – Condominiums

This bill substantially revises the method and process of termination of a condominium and sets forth procedures for management of the association during termination. Substantively, the bill amends s. 718.117, F.S., to provide for approval of termination because of economic waste or impossibility by a 2/3 vote of the owners and lienholders unless otherwise provided in the condominium declaration; provides for approval of termination in all other situations where at least 80% of the voting interests vote in favor of termination and not more than 10% of the voting interest vote against termination; provides for

a written plan of termination with written notice provided to all unit owners prior to being voted upon; provides alternative methods for determining the allocation of proceeds from the sale of condominium property; and provides for a right to contest the plan of termination.

Affected Parties

Condominium Associations
Condominium Owners
Property Managers

Practical Effect

Prior to this bill, unless the declaration provided otherwise, termination of a condominium required the consent of all unit owners and all holders of recorded liens affecting any of the condominium parcels. Achieving such consent was extremely difficult, especially after natural disasters. Associations dealing with hurricane damage or extremely costly repairs and upgrades will now be allowed to terminate with the approval of the lowest percentage of unit owners that association documents require. In cases where developers approach condo associations about selling, the bill allows for termination if at least 80 percent of unit owners agree and no more than 10 percent reject the plan.

Status

ORDERED ENROLLED 5/2/07



HB 7031 – Community Associations

This bill allows homeowners’ associations and cooperative associations to participate in a “pooled” insurance option for obtaining

windstorm insurance coverage; establishes new budget disclosure requirements for condominium and cooperative prospectuses relating to budget changes due to increases in insurance premiums; preserves the developer assessment guarantees in prospectuses; and provides that unforeseen increases are not material changes to the offering circular.

Affected Parties

Community Associations
Condominium/Cooperative Owners
Property Managers
Developers

Practical Effect

Generally, the bill impacts the procedures for condominium conversions. It also increases the insurance options that condominium, cooperative, and homeowners’ associations have with regard to insuring association property and participating in self-insurance.

Status

APPROVED BY GOVERNOR 5/24/07
Chapter No. 2007-80



CS/CS/SB 902 – Community Associations

This bill allows property owners that are not currently subject to current homeowners’ association law to revive covenants that have lapsed under the Marketable Record Title Act; eliminates mandatory mediation of disputes between homeowners’ associations and members conducted by the Department of Business of Professional Regulation; and revises

financial reporting requirements for homeowner's associations.

Affected Parties

Homeowner's Associations
Certified Public Accountants
Mediators

Practical Effect

The Marketable Record Title Act may cause covenants to lapse by operation of law if the covenants are silent as to expiration, or if a 30-year period in the Marketable Record Title Act is shorter than the stated expiration time. Residents in these communities now have the option to revive the covenants after the expiration by following the covenant revitalization procedures.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/4/07



CS/HB 405 – Vacation and Timeshare Plans

This bill revises various provisions relating to vacation & timeshare plans. Specifically, it amends the formula for funding reserve accounts for capital expenditures and deferred maintenance relating to condominium conversions; allows a seller to offer an out-of-state timeshare interest in a timeshare plan without filing a public offering statement under certain circumstances; deletes the provisions requiring a public offering statement to include a description of developer financing; creates recordkeeping requirements for resale service providers and lead dealers; amends the insurance requirements of the managing en-

tity; and deletes the requirement that the amount of insurance coverage be equal to the replacement cost of the accommodations and facilities.

Affected Parties

Developers
Timeshare Brokers
Property Managers

Practical Effect

This bill decreases government regulation of timeshare plans located outside the state of Florida.

Status

APPROVED BY GOVERNOR 5/24/07 Chapter No. 2007-75



CS/HB 333– Homestead Exemption

In 2006, a constitutional amendment was adopted that granted the legislature authority to increase the maximum amount of the local-option additional homestead exemption for low income seniors from \$25,000 in property value to \$50,000. This bill contains the statutory language implementing this amendment and allows a county or municipality to adopt an ordinance to allow an additional homestead exemption of up to \$50,000 for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age 65, and whose income does not exceed \$20,000.

Affected Parties

Local Governments
Property owners 65 years and older

Practical Effect

If adopted by local governments, this bill will create tax savings for Florida's senior citizens.

Status

APPROVED BY GOVERNOR 4/9/07 Chapter No. 2007-4-HJ 00363



CS/SB 1844 – Homeowner's Associations

This bill provides that a parcel owner, regardless of how his or her parcel has been acquired, is liable for all assessments that come due and that such assessments cannot be avoided by the parcel owners waiver or suspension of the use and enjoyment of any common area or by abandonment of the assessed parcel. This bill also requires homeowner's associations to provide parcel owners with written notice before filing a claim of lien for unpaid assessments. It further provides that after service of a summons by a homeowners' association to foreclose a lien, the parcel owner may serve a qualifying offer to pay all amounts under the lien plus interest and stay the foreclosure proceeding.

Affected Parties

Homeowners
Homeowner's Associations

Practical Effect

This bill allows a homeowner's association to collect assessments regardless of a property owner's current use and enjoyment of the common areas. It also provides property owners with a 45 day period in which to pay all past due assessments and attorney's fees

prior to being served with an action for foreclosure.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/4/07



CS/CS/SB 1824 – Mortgages

The bill creates a comprehensive consumer protection package relating to mortgages. It provides that mortgage brokers and lenders supply to borrowers detailed disclosures for various loan products and requires that in every mortgage loan transaction, mortgage brokers and lenders shall notify a borrower of any material changes in the terms of a mortgage loan that was previously offered to a borrower within 3 business days after being made aware of such changes by the lender, but not less than 3 business days before signing the settlement or closing statement.

Affected Parties

Mortgagors
Mortgage Brokers

Practical Effect

This bill strengthens consumer protection related to the mortgage loan application process.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 6/4/07



CS/HB 111 – Title Insurance

The bill provides that in order to be licensed as a nonresident title insurance agent the individual must pass an examination for licensure and must complete the continuing education requirements in the same manner as resident title insurance agents. The bill also repeals the prohibition against an agent charging less than actual cost for closing services and the requirement that the title insurer or agency must maintain a record of the related title service charges made for issuance of the policy.

Affected Parties

Title Agents
Purchasers of title insurance

Practical Effect

Parties purchasing title insurance will be able to negotiate with title insurance agents for lower rates on the agent’s share of the title insurance premium and lower rates on closing services.

Status

APPROVED BY GOVERNOR 5/22/07 Chapter No. 2007-44



CS/HB 7057 – Hurricane Damage Mitigation

The bill creates “My Safe Florida Home Program” to enhance the state’s windstorm mitigation program and provide home inspections for up to 400,000 single family homes and financial grants for at least 30,000 applicants to upgrade their homes to protect the structures from wind borne debris during a hurricane.

Affected Parties

Homeowners

Practical Effect

This bill provides for free home inspections and matching grants of up to \$5000 for home mitigation to encourage residential property owners in Florida to retrofit their properties, making them less vulnerable to hurricane damage and helping decrease the cost of residential property and casualty insurance.

Status

SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 5/29/07



**ADMINISTRATIVE
LAW
TEAM**

**Paul Figg
Melanie Hines
Dawn Meyers
Gabe Nieto
Kelly O’Keefe
Dan Pascale
Sam Poole
Jack Shawde
Dan Thompson**

(954) 712-5104
(850) 521-6722
(954) 627-9915
(305) 714-4365
(850) 521-6724
(305) 714-4393
(954) 627-9918
(305) 603-0879
(850) 521-6723

pfigg@bergersingerman.com
mhines@bergersingerman.com
dmeyers@bergersingerman.com
gnieto@bergersingerman.com
kokeefe@bergersingerman.com
dpascale@bergersingerman.com
spoole@bergersingerman.com
jshawde@bergersingerman.com
dthompson@bergersingerman.com