The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Wednesday, December 8, 2010
TIME: 8:30 —10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Overview of Committee Jurisdiction.		
2	Brief discussion on 2010 Committee Legislation.		
3	Presentation by the Florida Housing Finance Corporation on the Innovation Fund for the Hardest Hit Housing Markets.		
4	Update on the Litigation of Senate Bill 360.		

Senate Committee on Community Affairs
2010 – 2012

General Subject Areas

Broad range of issues relating to local governments; community development districts; homestead exemptions; property assessment and taxation; growth management; affordable housing; building code and inspection; zoning and siting; local government finance and taxation; impact fees; mandates; eminent domain; retirement issues for local employees; homeowners associations; disaster preparedness; community redevelopment; enterprise zones; coastal management; ADA and handicapped parking.

Department Oversight

Department of Community Affairs
Regional Planning Councils
Florida Housing Finance Corporation

2010 Community Affairs Legislation that Did Not Become Law

SB 126 — Community Redevelopment

by Senator Bullard

The bill included land used as a military facility which is undeveloped and which the Federal government has declared surplus within the preceding 20 years in the definition of "blighted area" for purposes of the Community Redevelopment Act.

Vote: Senate 38-0; House Died in Messages

SB 198 — Retirement/Special Risk Class

by Senator Baker

This bill authorizes FRS Special Risk Class members to purchase the increase in accrual value of upgraded retirement credits for past service at 3% of the member's average final compensation. The bill also adds emergency medical technician and paramedic service to the types of eligible past service. The employer is required to pay the actuarial calculation costs at the greater of $400 or actual costs.

Vote: Senate 39-0; House Died in Messages

SB 218 — Medical Expenses/Inmates/County or Municipality

by Senators Jones and Aronberg

The bill established a specific payment rate for medical services provided to arrested persons when no formal written agreement exists between a county, municipality or law enforcement entity, and a medical provider.

The bill specified that any payments made from county or municipal general funds to a provider for medical care, treatment, hospitalization, and transportation of an arrested person shall be made at 110 percent of the Medicare allowable rate for such services, when no formal written agreement exists. The maximum allowable rate, however, does not apply to payments to physicians licensed under chapter 458, F.S., or chapter 459, F.S., for emergency services provided within a hospital emergency department.

Vote: Senate 37-1; House Died in Messages

SB 262 — Affordable Housing

by Senators Bennett, Altman and Gaetz

This bill removes the cap on documentary stamp tax revenue for affordable housing and prohibits the use of affordable housing dollars for financing or assisting new construction until July 1, 2011. The bill also revises the State Housing Strategy to provide assistance for persons with special needs and requires multi-family housing funds to be administered to individuals most in need. The bill further allows the Florida Housing Finance Corporation (FHFC) to receive federal funds when there are no corresponding programs, classifies the FHFC as a state agency, and allows the executive director to appoint or remove an inspector general.

(Substituted for HB 665)
Vote: Senate 31-6; House Died in Returning Messages

SB 282 — Review/DCA/Florida Government Accountability Act
by Senators Bennett and Crist

This bill was the result of a sunset review of the Department of Community Affairs and the Florida Housing Finance Corporation conducted by the Committee on Community Affairs pursuant to the Florida Government Accountability Act.

This bill would have reenacted the Department of Community Affairs, including the Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management. This bill also reenacts the Florida Housing Finance Corporation.

Vote: Senate 38-0; House Died in Messages

SB 346 — Working Waterfront Property
by Senators Dean, Gaetz, Lynn, Smith, Aronberg, Rich, Storms, and Sobel

This bill implements section 4(j), Article VII, of the State Constitution, which provides that "working waterfront property" must be assessed at its current use. It directs property appraisers to utilize the income approach to valuation, and if not appropriate then to value the property at its present cash value. The bill classifies "working waterfront property" as:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support activities.

The bill also provides an application and appeals process for working waterfront classification, and establishes penalties for failure to notify a property appraiser of any change in use of the property.

Vote: Senate 35-0; House Died in Messages

SB 610 — Collective Bargaining for Certain Public Employees
by Senators Fasano, Wise, Altman and Oelrich

This bill amend s. 447.203, F.S., to specify that the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court are each deemed to be the "legislative body" for their respective employees for purposes of resolving collective bargaining impasses, except in charter counties where constitutional officers have been replaced with charter officers by referendum. The bill also provides that in circumstances where the sheriff has contracted with another governmental body to function as the employing agency for firefighters, emergency medical technicians, or paramedics, then that governmental body is the "legislative body" for those employees.

Vote: Senate 26-11; House Died in Messages

SB 690 — Local Government Accountability
by Senators Dean and Gaetz

This bill provided minimum standards for budgeting by counties, county officers, municipalities, and special districts. The bill required that the budgets and budget amendments of each county, county officer, municipality, special district, and school district be posted on the government entity's website. The bill required counties, municipalities, and special districts to file their annual financial report and annual financial audit report within nine months of the fiscal year end with the Department of Financial Services and the annual financial audit report with the Office of the Auditor General within nine months of the fiscal year end. This bill also amended the process used by the Legislative Auditing Committee and the Department of Community Affairs to compel special districts to file certain required financial reports.

Vote: Senate 38-0; House Died in Messages

SB 1004 — Local Government
by Senators Gelber and Bullard

The bill authorizes the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, rather than having to go through the competitive bidding process. The bill also allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

Vote: Senate 38-0; House 113-0
Vetoed by Governor

SB 1340 — Public Records/Arts Center/Capitol & Research Center
by Senator Ring

The bill created an exemption from public-records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous. The bill also created an exemption from public-records requirements for information identifying a donor or prospective donor to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol. The exemptions would be subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act. The bill contains a statements of public necessity.

Vote: Senate 34-1; House Died in Messages

SB 1408 — Working Waterfront Property
by Finance and Tax Committee

This bill implements section 4(j), Article VII, of the State Constitution, which provides that “working waterfront property”, must be assessed at its current use. It directs property appraisers to utilize the income approach to valuation, and if not appropriate then to value the property at its present cash value. The bill classifies “working waterfront property” as:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent marine manufacturing facilities.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support facilities.
- Water-dependent facilities used for the commercial transportation of goods and people. These activities include, but are not limited to, towing, storage, and salvage.

The bill provides an application and appeals process for working waterfront classification, and establishes penalties for failure to notify a property appraiser of any change in use of the property. The bill also creates new criteria and program objectives for the Stan Mayfield Working Waterfronts Program, and declares that the invalidity of any provision of this act or application thereof, shall not affect other provisions or applications provided in this act.

Vote: Senate 28-8; House Died in Messages

SB 1920 — Florida Endowment for Vocational Rehabilitation

by Senator Wise

The bill removed the State Board of Administration's (SBA) requirement to invest and reinvest moneys in the endowment fund of the Florida Endowment for Vocational Rehabilitation. The bill also removed the requirement for transmitting moneys in the endowment fund for deposit in the foundation's operating account. The bill removed the threshold in law for the endowment fund principal.

The bill provided for remitting the following to the Department of Revenue (DOR) for deposit in the endowment fund:

- Two percent of the remainder of all civil penalties received by a county court pursuant to Chapter 318, F.S.; and
- Sixty percent of the additional fine related to assisting mobility-impaired persons.

Additionally, 40 percent must be distributed pursuant to s. 318.21(1) and (2), F.S.

Finally, the bill required that all funds currently held by the SBA for investment for the endowment fund be returned to the endowment fund within a reasonable time.

Vote: Senate 34-0; House Died in Messages

SB 2754 — East Lake Tarpon Community/Pinellas County

by Senators Fasano, Joyner, Jones, and Justice

This local bill provided that, notwithstanding any other provision of law, a Pinellas County municipality may not annex unincorporated territory situated within the defined boundaries of the East Lake Tarpon Community following the effective date of the act unless the annexation of the entire community is approved by a majority vote of resident electors. The final bill did not prohibit voluntary annexations.

Vote: Senate 38-0; House Died in Messages

SB 2776 — Pinellas County

by Senators Justice, Fasano, Jones and Joyner

This local bill provided that, notwithstanding any other provision of law, a Pinellas County municipality may not annex unincorporated territory situated within the defined boundaries of the Lealman Community following the effective date of the act unless the annexation of the entire community is approved by a majority vote of resident electors. The section would have expired July 1, 2016.

Vote: Senate 38-0; House Died in Messages

FLORIDA
HARDEST-HIT

Program Fact Sheet

Background

In February 2010, US Treasury (Treasury) created the "Housing Finance Agency (HFA) Innovation Fund for the Hardest-Hit Housing Markets" (HFA Hardest-Hit Fund) and allocated funds under the Emergency Economic Stabilization Act of 2008 (EESA) to five states: Arizona, California, Florida, Michigan and Nevada. The funds were allocated to these states because of their excessive housing market depreciation and to assist in foreclosure prevention efforts. In March 2010, Treasury allocated a second disbursement of $600 million to an additional five state HFAs based on their high unemployment rates. On August 11, Treasury again expanded the HFA Hardest-Hit Fund to include a total of 18 states and the District of Columbia, and added an additional $2 billion. Florida received another allocation of funds, $236.8 million, from the third round of funding; when added to the initial allocation of $418 million, Florida's total funding became $656.8 million. Most recently, on September 29, 2010, Treasury announced a fourth round of funding, awarding Florida an additional $401 million; this brings Florida's total award amount to more than $1 billion.

Current Programs

Florida Housing Finance Corporation (Florida Housing) was directed by Treasury to create and administer foreclosure prevention assistance programs that address the unique issues of our state. Treasury requires that Florida use a portion of these funds specifically for targeted unemployment programs that provide temporary assistance to eligible homeowners.

These targeted unemployment programs are as follows:

- **Unemployment Mortgage Assistance Program (UMAP)** will provide up to 18 months of payments to the mortgage lender to assist unemployed/underemployed borrowers with their first mortgage until they can resume payments on their own.

- **Mortgage Loan Reinstatement Payment (MLRP) Program** will be used to bring a delinquent mortgage current for a homeowner who has returned to work or recovered from underemployment.

On October 25, 2010, homeowners in Lee County may begin submitting applications online at www.FlHardestHitHelp.org. Homeowners from across the state will be able to apply early in 2011, pending the successful outcome of the Lee County pilot program.

Additional information on these programs, including detailed eligibility criteria, may be found at www.FLHardestHitHelp.org.

HHF SUMMARY TIMELINE

- In **February 2010**, the federal government announced $1.5 billion in funding to the hardest hit housing markets in the states that have been hit with foreclosures, housing price declines and unemployment. Florida was one of these states and received $418 million.

- In **mid-April**, Florida submitted its plan for how the funds would be used to US Treasury. In **late June** Treasury gave Florida the authority to move ahead, starting with an August pilot in Lee County to test the strategy.

- However, **from April – August**, Florida and the other participating states were in discussions with numerous mortgage loan servicers trying to get them to commit to participate in these state strategies. No major national servicer would commit to participate in any of the strategies put forth by the participating states, citing a lack of uniformity between the states' programs.

- In **August 2010**, Treasury announced additional funding and added more states to the group. Florida received an additional $238.8 million, but was informed that its originally approved Mortgage Intervention Strategy was ineligible for use with the new funds. As a result Florida postponed the rollout of the pilot program in Lee County in order to amend the Mortgage Intervention Strategy and try to gain broader servicer participation.

- In **September** Treasury recognized that the major servicers were unwilling to participate in a mortgage payment program that was not uniform across all of the states. Treasury held a meeting with the states, six major loan servicers and others to standardize plans for the Unemployment Mortgage Assistance and Mortgage Loan Reinstatement programs.

- In **early October** a standardized Servicer Participation Agreement and term sheets for the programs were circulated by Treasury. Florida Housing is currently working with servicers to get as many signed up as possible under these standardized programs for the launch of **Florida's October 25, 2010, pilot program** in Lee County.

- Additional states were added in August 2010, and there are now 18 states and the District of Columbia participating in the $7.6 billion HHF program. Florida's total share of these funds now totals over $1 billion.

HHF DETAILED TIMELINE

- On February 19, 2010, President Obama announced $1.5 billion in funding called the Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HFA Hardest-Hit Fund or "HHF") to help families in the five states that have been hit the hardest by the combination of housing price declines and unemployment.

- Florida was one of the first five states (along with CA, AZ, NV and MI) and received an initial allocation of $418 million. We were given a deadline of April 15, 2010 to submit a plan to spend these funds.

- In March 2010, five more states (NC, OH, OR, RI, SC) were added to this program and funded with an additional $600 million.

- Florida Housing held a public hearing on April 5, 2010 in Orlando to solicit input from servicers, housing counselors, homeowners and other interested stakeholders on what we should include in our plan.

- Florida submitted its proposed plan to Treasury on April 15, 2010. The plan included three strategies for:
  1. Mortgage payment assistance for unemployed or underemployed borrowers that included provisions for principal reduction and/or subordinate lied reduction if necessary to effectuate a loan modification after re-employment of the homeowner. We called this our "Mortgage Intervention Strategy".
  2. Legal Assistance provided through the legal services network in Florida for homeowners facing foreclosure and going through the Florida Supreme Court mandated Managed Mediation process.
  3. Downpayment assistance for homeowners purchasing a foreclosed property in order to reduce the excess inventory of homes throughout Florida and help stabilize property values.

- From April 15 – June 23, 2010 we were in an "iterative process" with Treasury on our proposed plan. Treasury disallowed both our Legal Assistance and Downpayment Assistance strategies saying they were not allowed under the federal law governing the HHF Program. We were left with only our Mortgage Intervention Strategy.

- From May – July 2010, we were in discussions with Fannie Mae about submitting a proposal to Treasury that would utilize a portion of the HHF funds to facilitate short sales in target markets in Florida. Fannie Mae's regulator, the Federal Housing Finance Corporation, disallowed Fannie Mae's participation in this strategy in July.

- On August 11, 2010, Treasury announced $2 billion in additional funding for the HHF program. Seven additional states (GA, IL, IN, KY, MS, NJ, TN) and the District of Columbia were added and Florida received an additional $238.8 million. This additional money came with the condition that it be used for a specific unemployment mortgage payment program. Treasury informed Florida Housing that its Mortgage Intervention Strategy was ineligible for use with the new funds.

- From April – August, 2010 we were in ongoing discussions with numerous mortgage loan servicers trying to get them to commit to participate in our Mortgage Intervention Strategy. No major national servicer would commit to participate in any of the HHF strategies put forth by any of the participating states, citing a lack of uniformity between the states' programs. We postponed the rollout of our pilot program in Lee County that was scheduled for August 23, 2010 in order to both amend our Mortgage Intervention Strategy with Treasury and to try to gain broader servicer participation.

- September 2010 – Treasury, recognizing that the major servicers will not participate in an unemployment mortgage payment program that is not made more uniform across all of the states, sets a September 21, 2010 meeting between Treasury, the first ten state HFA's, Fannie Mae, Freddie Mac, the Federal Housing Finance Administration and six major loan servicers throughout the country to standardize plans for Unemployment Mortgage Assistance and Mortgage Loan Reinstatement programs.

- October 1, 2010 – A standardized Servicer Participation Agreement and term sheets for the Unemployment Mortgage Assistance and Mortgage Loan Reinstatement programs are circulated by Treasury. Florida Housing is working with servicers to get as many signed up as possible under these standardized programs for the launch of our October 25, 2010 pilot program in Lee County.

- There are now 18 states and the District of Columbia participating in the $7.6 billion HHF program. Florida's share of these funds now totals over $1 billion.

<u>Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets</u>
<u>("HFA Hardest-Hit Fund")</u>

Frequently Asked Questions

March 5, 2010

On February 19, 2010, President Obama announced $1.5 billion in funding for innovative measures to help families in the states that have been hit the hardest by the aftermath of the burst of the housing bubble. States where house prices have fallen more than 20% from their peak are eligible for this funding. Such price declines, coupled with the effects of high unemployment, mean that many working and middle-class families in these areas are facing serious challenges. These funds will be utilized for innovative programs being developed by state Housing Finance Agencies to address these challenges. Below are some answers to frequently asked questions about this program.

What are HFAs and what do they do?

Housing Finance Agencies or HFAs are agencies or authorities created by state law that are charged with helping persons and families of low or moderate income attain affordable housing. HFAs provide responsible and affordable housing resources to low and moderate income borrowers who might not be served elsewhere. Some of their primary activities include: financing mortgages at low rates, funding development of affordable rental properties and refinancing or modifying mortgage loans for at-risk borrowers. HFAs have established a strong track record of offering effective foreclosure prevention and sustainable homeownership opportunities for working families. According to the National Council of State Housing Agencies (NCHSA), its member agencies have provided mortgage financing for nearly 3 million homes in America and helped finance construction of approximately 3 million affordable rental properties. Combined, State HFAs typically fund about 100,000 mortgages a year.

What is the objective of the HFA Hardest-Hit Fund?

The HFA Hardest-Hit Fund was designed to allow the maximum possible flexibility to HFAs in designing locally-focused programs that address the needs of a specific state or region within a state. All programs must have foreclosure prevention and housing market stability as their primary objectives.

How is the HFA Hardest-Hit Fund related to the Obama Administration's Making Home Affordable program?

The HFA Hardest-Hit Fund was announced on February 19, 2010 to help address the housing problems in the states that have experienced the most severe home price declines. It is designed to complement and add to the framework of other Administration policies announced over the past year to stabilize the US housing market and keep American homeowners in their homes.

- On February 18, 2009, President Obama announced the *Homeowner Affordability and Stability Plan* – a comprehensive set of programs designed to stabilize the U.S. housing market and help keep millions of American homeowners in their homes. As part of this plan, the Administration provided additional support to Fannie Mae and Freddie Mac (collectively called "Government Sponsored Entities" or "GSEs") to ensure continued confidence in those institutions and continued access to affordable mortgage credit across the market. The plan included expanded refinancing flexibilities for the GSEs, which, along with historically low interest rates, have helped over four million American homeowners to refinance, saving an estimated $150 per month on average and more than $6.8 billion in total. Another component of the plan, the Home Affordable Modification Program (HAMP), has provided over 1 million struggling homeowners a second chance to stay in their homes by modifying their existing mortgage to achieve an affordable and sustainable monthly payment. Through HAMP each homeowner in a modification is saving an average of $500 per month because of their reduced monthly mortgage payments.

- On October 19, 2009 the Administration announced the Housing Finance Agencies Initiative to support state and local housing finance agencies in providing sustainable homeownership and rental resources for working Americans nationwide. Over 90 HFAs across 49 states participated in the program, supporting $15.5 billion in HFA financing at no expected cost to the taxpayer.

- The First Time Homebuyer Tax Credit has helped hundreds of thousands of responsible Americans purchase homes.

- The American Recovery and Reinvestment Act of 2009 supported the Low Income Housing Tax Credit market by creating an innovative Tax Credit Exchange Program ("TCEP") and providing gap financing through the HUD Tax Credit Assistance Program ("TCAP"). In combination these programs are estimated to provide over $5 billion in support for affordable rental housing. The Recovery Act also provided $2 billion in support for the Neighborhood Stabilization Program (NSP) in addition to $4 billion provided for the program in the Housing and Economic Recovery Act.

How was the size of the HFA Hardest-Hit Fund determined?

$1.5 billion of funding under the Emergency Economic Stabilization Act ("EESA") has been allocated for the HFA Hardest-Hit Fund. This level of funding will allow the hardest hit states to develop scalable innovative local approaches to foreclosure prevention programs and is an amount that housing finance agencies will be able to absorb and use effectively.

What methodology was used to determine allocations?

The HFA Hardest-Hit Fund announcement indicated that funds would be allocated according to a formula based on home price declines and unemployment. For this simple formula, each state's allocation was determined by first adding two ratios: (i) the ratio of its unemployment rate to the highest unemployment rate in any state and (ii) the ratio of its price decline to the largest price decline in any state. This sum is used to scale the number of delinquent loans in each state. HFA funds are allocated among the states based on this weighted share of delinquent borrowers.

For this calculation, unemployment data is from the Bureau of Labor Statistics as of December 2009, the most recent month available. The home price decline is calculated from each state's home price peak using the FHFA Purchase Only Seasonally Adjusted Index. This index is a widely-used measure of state-level housing price changes and includes only purchase price data – as opposed to refinancing data which are subject to appraisals – and thus may be less systematically biased. The delinquent loans include loans over 60 days delinquent but not in foreclosure as of the fourth quarter of 2009, using MBA data. Treasury does not include loans in the foreclosure process in order to avoid distortions caused by differences in state foreclosure laws that affect the length of time loans may remain in the foreclosure pipeline. Including just delinquent loans give a measure of struggling borrowers that is more comparable across states.

Set forth below is a summary of the methodology used to determine calculations:

	Housing Price Decline		Unemployment						
	Housing price decline from peak	**Ratio relative to largest decline**	**December 2009 unemployment rate**	**Ratio relative to highest unemployment rate**	**Sum of ratios *(State's weight)***	**Number of delinquent loans in Q4 2009**	**Weighted number of delinquent loans**	**Weighted share of delinquent loans in these states**	**Allocation ($mm)**
Nevada	-49.9%	1.00	13.0%	0.89	1.9	62,622	118,382	6.9%	$102.8
California	-38.9%	0.78	12.4%	0.85	1.6	494,640	805,978	46.6%	$699.6
Florida	-37.4%	0.75	11.8%	0.81	1.6	309,022	481,558	27.9%	$418.0
Arizona	-36.8%	0.74	9.1%	0.62	1.4	105,853	144,073	8.3%	$125.1
Michigan	-24.1%	0.48	14.6%	1.00	1.5	120,030	178,000	10.3%	$154.5
Total									**$1,500.0**

Why are only 5 states receiving funding?

The purpose of the HFA Hardest-Hit Fund is to support new and innovative foreclosure prevention efforts in the areas hardest hit by housing price declines and high unemployment rates. In order to help significant quantities of borrowers and test the effectiveness of these efforts, funding levels need to be high enough to make a significant impact. For this reason, HFAs in the five states most severely impacted will be allocated funding. However, we expect that lessons learned through these innovative programs will help other HFAs serve their communities, and will assist Treasury in analyzing the effectiveness of, and designing, locally-targeted housing programs.

What will the HFAs do with this funding?

The HFA Hardest-Hit Fund is intended to allow the maximum possible flexibility to HFAs in designing locally-focused programs that are tailored to the needs of the specific state or a region within a state. All programs must have foreclosure prevention and housing market stability as their primary objectives. In reviewing program designs, Treasury will determine whether all proposed programs would meet the requirements of EESA. While one goal of the HFA Hardest-Hit Fund is to foster innovation, Treasury has outlined some of the possible types of transactions that would be acceptable under EESA. This is not meant to be an exhaustive list of acceptable transactions and other innovative ideas and transaction types (including innovations related to the Making Home Affordable Program) will be evaluated on a case-by-case basis for compliance with EESA.

a. **Mortgage Modifications** – Programs may provide for mortgage modification of loans held by HFAs or other financial institutions or provide incentives for servicers / investors to modify loans.

b. **Mortgage Modifications with Principal Forbearance** – Programs may provide for paying down all or a portion of an overleveraged loan and taking back a note from the borrower for that amount in order to facilitate additional modifications.

c. **Short Sales / Deeds-In-Lieu of Foreclosure** – Programs may provide for assistance with short sales and deeds-in-lieu of foreclosure in order to prevent avoidable foreclosures.

d. **Principal Reduction Programs for Borrowers with Severe Negative Equity –** Programs may provide incentives for financial institutions to write-down a portion of unpaid principal balance for homeowners with severe negative equity.

e. **Unemployment Programs –** Programs may provide for assistance to unemployed borrowers to help them avoid preventable foreclosures.

f. **Second Lien Reductions –** Programs may provide incentives to reduce or modify second liens.

For programs designed to help individual homeowners, the target population should be limited to residences with unpaid principal balances equal to or less than the current GSE conforming limit of up to $729,750 (higher limits are allowable for two to four unit dwellings). HFAs may further target low and moderate income borrowers as required by the enabling state legislation for the applicable HFA.

Each program must be in full compliance with, all federal, state, and local laws, including, but not limited to, the Equal Credit Opportunity Act and the Fair Housing Act, which prohibit discrimination on a prohibited basis in connection with mortgage transactions. Mortgage modification programs are subject to the fair lending laws, and HFAs should ensure that the programs do not treat a borrower less favorably than other borrowers on grounds such as race, religion, national origin, sex, marital or familial status, age, handicap, or receipt of public assistance income in connection with any program.

How many homeowners could this program help?

HFAs may use the funding for a variety of programs designed to prevent avoidable foreclosures, assist unemployed borrowers, help address negative equity, or reduce second liens – all with the goal of helping responsible, but struggling American families stay in their homes. As part of the program plans submitted to Treasury, each HFA will estimate the number of borrowers that will benefit from their proposed use of funding. The final versions of each proposal, along with the estimate of the number of borrowers who may benefit, will be publically available on the Treasury website.

Will the HFAs have to pay this money back?

No. The objective of this fund is to prevent avoidable foreclosures in areas hardest hit by unemployment and home price declines. Foreclosure prevention is an objective explicitly listed in EESA. The HFA Hardest-Hit Fund has been created to encourage state HFAs to explore innovative approaches to address foreclosure prevention. It aims to promote flexibility in program design to maximize the impact in local communities.

When will HFAs begin to utilize funding?

Proposals are due from HFAs by April 16, 2010. Treasury will then review each proposal for compliance with program objectives and EESA requirements. Treasury expects that HFAs may be in the position to begin drawing down funds within four to six weeks following submission of proposals.

How will Treasury ensure that HFAs adhere to robust compliance standards in this program?

As with all other uses of funds made available through EESA, the HFA Hardest-Hit Fund will be subject to oversight by Treasury, the Comptroller General of the United States, Government Accountability Office, Congressional Oversight Panel, and the Special Inspector General of the Troubled Asset Relief Program. All books, communications and records regarding the use of EESA funds must be available for review by any of these entities upon request.

In addition, each HFA will be required to design its program(s), establish monitoring mechanisms, and implement a system of internal controls which minimize the risk of fraud, mitigate conflicts of interest, and maximize operational efficiency and effectiveness. A system of internal controls should encompass the HFA's processes, their business partnerships and relationships and any constituency being aided through these programs. The HFAs will be required to test, certify, and provide an independent verification of the effectiveness of these controls at least annually including an assessment prior to program launch to ensure their eligible entities have taken appropriate steps to meet program objectives, as well as to provide audited financial statements to Treasury.

Litigation regarding SB 360 (2009-96, Laws of Florida) "The Community Renewal Act"

Background

- Florida's Growth Management Act requires all cities and counties to adopt Local Government Comprehensive Plans to guide future growth and development.
- Comprehensive plans contain chapters or "elements" that address future land use, **housing**, **transportation**, infrastructure, coastal management, conservation, recreation and open space, **schools**, intergovernmental coordination, sewer, solid waste, drainage, potable water, natural groundwater recharge, the water supply plan, and **capital improvements**.
- A key component of the Act is its "concurrency" provision that requires infrastructure facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Provisions in SB 360: Transportation Concurrency

- Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development.
- To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period.
- New development that would lead to traffic that exceeds the LOS for a roadway may be prohibited from going forward unless the developer contributes funds to transportation improvements that would mitigate the impact of the proposed development on the LOS.

Provisions in SB 360: Transportation Concurrency

- Unintended consequences related to transportation concurrency requirements:
  - Unfair application: some developers pay for impacts to the roadways and some do not.
  - Encourages sprawl: there is an incentive to develop in less populated areas where the LOS has not yet been met.
  - Impractical in city centers.
- SB 360 sought to lessen these consequences by creating transportation concurrency exception areas (TCEAs) in certain jurisdictions based on population density.

Provisions in SB 360: Transportation Concurrency

- Local governments that are designated TCEAs are required to adopt into their comprehensive plans "land use and transportation strategies to support and fund mobility within the exception area" within 2 years of being designated a TCEA.
- To protect local governments' ability to manage and fund transportation within their jurisdiction, the bill specified that it was not intended to "limit a local government's home rule power to adopt ordinances or impose fees."

Provisions in SB 360: Capital Improvements Element

- Local governments must annually adopt a financially feasible Capital Improvements Element (CIE) schedule. The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year.
- Prior to SB 360, the majority of local governments had failed to submit their financial feasibility reports by the deadline of December 1, 2008.
- Failure to update the CIE can result in penalties such as:
  - a *prohibition on Future Land Use Map amendments*;
  - ineligibility for certain grant programs; or
  - ineligibility for revenue-sharing funds.
- SB 360 moved the deadline for compliance to December 1, 2011.

Provisions in SB 360: Developments of Regional Impact

- Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.
- SB 360 exempted developments from the DRI process if they were within jurisdictions that met certain population density criteria.

Provisions in SB 360: School Concurrency

- School concurrency: adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval.
- Each local government must have adopted a public school facilities element and the required update to the interlocal agreement by December 1, 2008.
- Failure to meet this deadline, prior to SB 360, results in a prohibition on comprehensive plan amendments.
- SB 360 changed this penalty to financial sanctions.
- SB 360 also:
  - Allows for a waiver from school concurrency for small, low growth schools.
  - Changes the calculation of school capacity to include certain relocatable buildings.
  - Allows charter schools to count as mitigation for school concurrency.

Other Provisions in SB 360

- Affordable housing issues.
- A provision prohibiting local governments from requiring businesses to spend money on security cameras.
- A requirement that local governments mediate certain interlocal disagreements.
- A provision allowing local governments to decrease, eliminate, or suspend impact fees without having to wait 90 days as would have been required prior to SB 360.
- A provision requiring the completion of a mobility fee study, which was presented to the Legislature last year.
- A provision extending certain permits for two years.

The Lawsuit

- In July 2009, several local governments sued claiming SB 360 was unconstitutional as a violation of:
  - The mandates provision (Article VII, Section 18 of the Florida Constitution).
  - The single subject requirement (Article III, Section 6 of the Florida Constitution).

The Lawsuit: (A) Mandate

- Article VII, Section 18 of the Florida Constitution states:
  - No county or municipality *shall be bound* by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and:
    - The legislature **appropriates funds** or provides a funding source not available for such county or municipality on February 1, 1989;
    - The law requiring such expenditure is **approved by two-thirds** of the membership in each house of the legislature;
    - The expenditure is required to comply with a law that applies to all persons **similarly situated**, including the state and local governments; or
    - The law is required to comply with a **federal requirement**.
- Subsection (d) provides an exception for insignificant fiscal impacts.

THE LAWSUIT: (A) MANDATE

- The plaintiffs argued that local governments would be required to expend money for a number of reasons, including:
  - To amend existing comprehensive plans.
  - To develop and implement a mobility fee (probably intended to refer to mobility plans).
  - To revise local land development regulations to bring them into requirement with the law.

- The motion also made other claims such as:
  - The absence of transportation concurrency will require local governments to spend money on roads.
  - Permit extensions will require local governments to spend money to administer the extensions.
  - Disallowing local governments from requiring businesses to purchase security cameras will cost the local governments money.

The Lawsuit: Single Subject Violation

- Article III, Section 6 of the Florida Constitution states:
  - "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."
- Plaintiffs argued that there are three subjects represented in the bill:
  - Growth management.
  - Security cameras.
  - Affordable housing.

The Decision

- On a motion for summary judgment, the court decided that reenactment of the law into the Florida Statutes in 2010 rendered the single subject issue moot.
- The court decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments that have designated TCEAS would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

The Decision: Mandate Reasoning

- The court reasoned that an insignificant fiscal impact would be 10 cents per resident or $1.86 million dollars (thereby adopting the legislature's method of assessing an insignificant fiscal impact).
- The court decided that:
  - The cost of amending the comprehensive plan would be at least $15,000 per jurisdiction required to amend its comprehensive plan (the cost of comprehensive planning in actuality varies from jurisdiction to jurisdiction).
  - All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
  - Therefore, local governments throughout Florida will be required to spend $3,690,000 to comply with the bill (the court did not consider that even if this sum were accurate local governments would have two years in which to implement this requirement).

The Decision

- Having decided that SB 360 was an unconstitutional mandate, the court ordered the Secretary of State to expunge the law from the official records of the state.
- The case is now on appeal to the 1st District Court of Appeal.

Summary

- SB 360 was a significant piece of legislation that made an array of changes to the Florida Statutes.
- The trial court decided that SB 360 in its entirety was unconstitutional and invalid. The case is on appeal and the law is still in effect, but there is widespread uncertainty as a result of the ruling.
- SB 1752 from 2010 attempts to protect the following provisions of SB 360 in case the bill was overturned:
  - Exemptions from the DRI process that have already been granted.
  - 2-year permit extensions granted under the bill.
  - Comprehensive plan amendments implementing TCEAs.
- The legislature may want to consider whether it wants to further protect those who relied on the bill and whether it wants to preserve the many changes to statute made by SB 360.

Questions

- Thank you for your time.
- I would be happy to answer any questions.