FLORIDA

LEGISLATIVE COMMITTEE

ON

INTERGOVERNMENTAL

RELATIONS

LCIR DOCKET BOOK
January 9, 2006

Room 37, Senate Office Bldg.
Tallahassee, Florida

AGENDA
LCIR Meeting
January 9, 2006
3:15 p.m. – 5:00 p.m.
Room 37, Senate Office Building
Tallahassee, Florida

Senator Dennis Jones, *LCIR Chair* – Opening Remarks

Minutes from LCIR Meeting October 17, 2005 - Approval

Waterfront Facilities Permitting and Port Governance Interim Project – Chuck Hungerford, *Senior Staff Analyst*

2005 Intergovernmental Impact Interim Project Report – Kaymelia Pelt, *Staff Analyst*

Impact Fee Review Task Force - Update on the Activities

University of Florida's Review of the Medicaid Prepaid Dental Program - Update

Natural Disaster Preparedness, Response and Recovery Interim Project Report – John Cherry, *Staff Analyst*

Compensation of School Superintendents Interim Project Report – Steven O'Cain, *Senior Staff Analyst*

Discussion of Interim Projects for 2006-07

Other Committee Business

LCIR Meeting Docket Book
January 9, 2006

TAB 1: **Draft Minutes of October 17, 2005**
LCIR Action: Approve

TAB 2: **Waterfront Facilities Permitting and Port Governance Interim Project Draft Report**
LCIR Staff: Chuck Hungerford
LCIR Action: Discuss and Approve

TAB 3: **2005 Intergovernmental Impact Interim Project Draft Report**
LCIR Staff: Kay Pelt
LCIR Action: Discuss and Approve

TAB 4: **Impact Fee Review Task Force Update**
LCIR Staff: Cris Martinez
LCIR Action: Discuss

TAB 5: **University of Florida's Review of the Medicaid Prepaid Dental Program Update**
LCIR Action: Discuss

TAB 6: **Natural Disaster Preparedness, Response and Recovery Interim Project Draft Report**
LCIR Staff: John Cherry
LCIR Action: Discuss and Approve

TAB 7: **Compensation of School Superintendents Interim Project Draft Report**
LCIR Staff: Steven O'Cain
LCIR Action: Discuss and Approve

TAB 8: **Other Business**
- **Red Tide Memorandum**
- **Affordable Housing Survey Memorandum**

LCIR Staff: Rip Colvin
LCIR Action: Discuss

MEMORANDUM

TO: LCIR Members

FROM: Rip Colvin

RE: **Draft** Minutes for the LCIR Meeting October 17, 2005 in Tallahassee, Florida

DATE: December 29, 2005

Representative Adam Hasner, LCIR Chair, called the meeting to order at 3:20 p.m. A quorum was present. The attendance of the committee members was as follows:

PRESENT	ABSENT
Representative Hasner	Senator Klein (excused)
Senator Jones	Senator Lynn (excused)
Senator Constantine	Commissioner Bullard
Representative Brutus	Councilwoman Starace
Representative Taylor	
Representative Williams	
Commissioner Palmer	
Mr. Greer	
Secretary Cohen	
Ms. Tinker	
Commissioner Welch	

Opening Comments
Representative Hasner, Chair, welcomed members to the committee meeting.

Minutes of June 13, 2005 LCIR Meeting
The minutes of the June 13, 2005 LCIR Meeting were approved unanimously.

Update on Florida Impact Fee Review Task Force
The Chair called on Rip Colvin, LCIR Executive Director, to update the Committee on the Florida Impact Fee Review Task Force. Mr. Colvin gave an overview of the Task Force's charge as written in SB 360 from the 2005 Regular Session. He explained that the Task Force has met twice. The first meeting was in Jacksonville on August 23, at which time the newly appointed members got together to discuss the Task Force's mission and hear a general overview of impact fees in Florida. There was a presentation of a previous LCIR study on impact fees. The survey instrument which would be sent by LCIR staff to local governments and school districts was discussed and approved with some modifications. The second meeting was on September 23rd in Orlando. The meeting included presentations by representatives of various stakeholder groups. Mr. Colvin indicated that the Task Force will meet several times over the next few months, wrapping up February 1, 2006, with a report to the Governor and Presiding Officers.

Report on Compensation of School Superintendents
Steven O'Cain, LCIR Analyst, summarized the findings and policy options of the staff's draft interim project report, *Compensation of Florida's School Superintendents*. Mr. O'Cain stated that committee staff

surveyed each school district to request the total annual amounts expended or budgeted by the district on behalf of the school superintendent's compensation package for the 2005 and 2006 fiscal years. After three separate survey efforts, all school districts submitted survey responses.

Mr. O'Cain noted that Florida's school districts currently employ 24 appointed and 43 elected school superintendents. Pursuant to s. 1001.50, F.S., school districts are authorized to pay appointed school superintendents a reasonable annual salary and consider the following factors in determining the compensation to be paid: 1) the population of the school district; 2) the rate and character of population growth; 3) the size and composition of the student body to be served; 4) the geographic extent of the district; 5) the number and character of the schools to be supervised; and 6) the individual's educational qualifications and professional experience. Alternatively, the salaries of elected school superintendents are determined by a statutory population-based salary formula, pursuant to ss. 145.19 and 1001.47, F.S; although, a school board may approve, by majority vote, a salary in excess of the amount determined by the formula.

Next, Mr. O'Cain discussed the report's three findings.

Finding: A

Florida's most populous school districts employ appointed school superintendents whereas the majority of small to medium population-sized districts employ elected school superintendents. Each of the state's 10 most populous school districts, having a countywide population greater than 500,000, employs appointed superintendents. Of the 23 districts having a countywide population between 100,000 and 500,000, 12 employ appointed superintendents and 11 employ elected superintendents. Of the 34 districts having a countywide population less than 100,000, only two employ appointed superintendents and 32 employ elected superintendents.

Finding: B

The compensation paid on behalf of appointed school superintendents is generally greater than that paid on behalf of elected school superintendents. The reported base salaries of 21 of 24 appointed superintendents for fiscal year 2006 exceed the amounts that those same officers would receive if their respective salaries were determined by the statutory formula rather than by negotiated contract. The remaining three appointed superintendents have negotiated base salaries that are less than the corresponding formula-based salaries. Conversely, the reported base salaries of 29 elected superintendents equal the amounts determined by the statutory formula. Nine elected superintendents reported base salaries exceeding their respective formula-based amounts, while four elected superintendents reported base salaries less than their respective formula-based amounts.

Finding: C

The statutory authorization for participation by appointed school superintendents in the Special Qualification Salary and the Leadership Development and Performance Compensation Program is ambiguous and requires clarification. Section 1001.47(5), F.S., authorizes a special qualification salary of up to $2,000 per year for each district school superintendent that has met the certification requirements established by the Florida Department of Education. According to the Department, elected school superintendents are eligible for this additional compensation, and the district school board is authorized to pay the special qualification salary after the superintendent satisfies the certification requirements.

Section 1001.47(6), F.S., authorizes the Department to provide a leadership development and performance compensation program for district school superintendents, comparable to chief executive officer development programs for corporate executive officers. According to the Department, elected school superintendents are eligible for this additional compensation, and the Department is authorized to pay the salary incentive after the superintendent satisfies the program's requirements.

These supplemental training programs are conducted by the Florida Association of District School Superintendents via a contract administered by the Department and funded by an annual legislative appropriation of $290,400. The Association offers these training programs to both appointed and elected school superintendents. The training program expenses associated with the special qualification salary are paid by the Association while the superintendents' travel expenses are paid by the individual school districts. However, both the training program expenses and superintendents' travel expenses, associated with the leadership development and performance compensation program, are paid by the Association.

Some appointed school superintendents have chosen to participate in one or both of these certification programs as professional development and used the certification(s) as a factor in compensation package negotiations with their respective school boards.

Statutory ambiguity arises from the language of s. 1001.47(4), F.S., which provides that the section does not apply to appointed school superintendents. This particular subsection existed in law prior to the statutory introductions of the special qualification salary in 1980 and the leadership development and performance compensation program in 1986. As a result, the argument could be made that the intent was to restrict the formula-based salary calculation to elected school superintendents only. Conversely, an argument could be made that the Legislature meant to extend the restriction to these supplemental training programs because the subsection was not stricken when the programs were enacted or in other years when amendments to that section were passed. Additionally, based on survey responses received from a few school districts, there seems to be a perception among some districts that appointed superintendents are not eligible to participate in these training programs.

Next, Mr. O'Cain discussed the report's two policy options.

Policy Option: A

The Legislature should consider amending Part II of Chapter 1001, F.S., to remove any ambiguity regarding the participation by appointed school superintendents in the supplemental training programs.

The statutory salary formula calculation for elected school superintendents would not be impacted by the implementation of this policy option. Additionally, the implementation would not make the formula applicable to appointed school superintendents.

Policy Option: B

The Legislature should consider further policy discussion regarding the statutory salary formula and corresponding factors used to compensate elected school superintendents.

The factors considered in determining the compensation of elected school superintendents are fundamentally different than those used to determine the compensation of appointed superintendents. Legal authority exists for a district school board, which employs an elected superintendent, to approve a salary in excess of the amount specified by the statutory formula. However, according to the LCIR survey

results, the reported fiscal year 2006 base salaries for 29 of 43 elected superintendents equal the amounts determined by the statutory formula. Only nine elected superintendents reported base salaries exceeding their respective formula-based amounts. This observation suggests that other factors, such as local politics, may act to limit these voted salary increases. Consequently, the Legislature may wish to consider whether the factors used in the salary-formula calculation are currently appropriate and reflective of the duties assumed by an elected superintendent in the control, organization and administration of schools.

Members' Questions and Discussions

Representative Williams asked how school superintendents become appointed. Mr. O'Cain deferred to representatives of the Florida Association of District School Superintendents. Ms. Joy Frank, the Association's General Counsel, stated that the process of making the office of district school superintendent appointive is subject to voter approval in a countywide referendum.

Final Actions

Chairman Hasner thanked the committee staff for the report. No motion was made to formally approve the report nor was further direction regarding the policy options provided to staff.

Natural Disaster Preparedness Report

Representative Hasner then introduced John Cherry, LCIR Analyst, to present the draft report on Natural Disaster Preparedness, Response and Recovery. Representative Hasner indicated the importance of this report, which had been commenced at his request. He stressed that Florida does a good job of coordinating during natural disaster events. Representative Hasner complimented the Governor's office and other agencies for their work during the 2004 and 2005 hurricane seasons. He indicated the committee should continue to look to improving preparedness and response to these events.

Mr. Cherry began his presentation by noting that in 2004, our state was directly impacted by four hurricanes, an event not seen in the United States since 1886 in Texas. The estimated costs in damage from these storms was $56 billion and that they affected millions of Florida residents, some more than once, in many ways.

The goal of this project was to identify and aid in implementing measures which produce effective pre-disaster and post-disaster actions founded in good planning, training and preparation among federal, state and local leaders.

The report contained many policy options on several topics. Mr. Cherry's presentation discussed some of the more prominent proposals. Some of the policy options would require legislation to be adopted by Congress or the Florida Legislature, while others would simply necessitate adoption at the local level.

Policy Option: Emergency Management, Preparedness and Assistance Trust Fund

A review of statutory law pertaining to the Emergency Management, Preparedness and Assistance Trust Fund should be conducted to: explore alternative methods of collections that might increase the funds collected to adequately capture the state's growth; determine if an increase in the surcharge is warranted; review how funds can be used to finance specific local emergency management projects and functions; and determine whether or not language should be added to the law that exempts funds used to cover identified capital improvement projects from the fixed capital outlay appropriation reversion process provided for in statute.

Mr. Cherry explained that during preliminary discussions about this project, one area of continued concern that many members identified was the lack of growth in the Emergency Management, Preparedness and Assistance Trust Fund, which was established in 1993. He explained that this fee imposes an annual surcharge of $2 per residential insurance policy, and a $4 surcharge on all commercial fire, commercial multiple peril and business owner's property insurance issued or renewed after May 1, 1993. He indicated that while Florida's population grew by almost 20% between 1993 and 2003, the fund only grew by an average of 0.68% on an annual basis.

Mr. Cherry stated that the Florida Department of Revenue indicated the following possible reasons for the lack of growth in the trust fund:

- ✓ Out-of-state policies covering Florida property;
- ✓ Uninsured parcels;
- ✓ Consolidation of multiple policies into a single policy;
- ✓ Destruction of commercial and residential improvements; and
- ✓ Rezoning.

Commissioner Palmer asked if the data for 2004 trust fund collections was available. Mr. Cherry responded that at the time of the publishing of the report they were not, however, he would check with the Department and see if he could get updated figures.

Commissioner Palmer then asked how we could be sure that insurance companies were collecting the fee for the trust fund and returning it. Mr. Cherry responded that the Department has an audit function to ensure funds are being collected appropriately by licensed insurance companies in Florida.

Commissioner Palmer also asked if these funds could be used to cover matching funds for local governments. Secretary Cohen indicated a local government can petition for a waiver of matching funds if the local government is experiencing financial problems.

Policy Option: Natural Disaster Policy at the Federal Level

The Legislature should request, in coordination with the Florida Congressional Delegation, that the Federal Emergency Management Agency (FEMA) retroactively include Florida in its Policy Number 9523.13, concerning reimbursement for debris removal, for the 2004 storms, 2005 storms to date, and in future storms affecting the state. Inclusion in this policy could result in significant funds being reimbursed to the state and local governments; however, the state and local governments would still be responsible for the percentage not paid by FEMA per their public assistance policy (matching funds).

In 2004, Florida was initially reimbursed at 100% for work including debris removal for the first 72 hours and then reimbursed at 90% thereafter. The split of the remaining costs is due to the fact that Florida law requires that whenever the state accepts financial assistance from the federal government or its agencies under the public assistance program, the state will pay one-half of the required match for local governments.

Mr. Cherry then explained that the issue of debris removal is still a hot topic of debate among local, state and federal officials. He said that several counties reported receiving mixed messages regarding debris removal reimbursement from private property. In addition, he said some counties contended that FEMA indicated they would reimburse for debris removal on private roads for safety reasons. For example, Polk County reported they were told they would be paid for all debris removal on private roads as long as they

were not in gated communities. Accordingly, the county cleared the roads, but then received no reimbursement from FEMA, costing the county $4 million. In researching the project, Mr. Cherry said that FEMA indicates exceptions for removal of debris on private roads are rare. According to the Florida Department of Community Affairs' Division of Emergency Management (DEM), FEMA will remove storm debris from private roads if the county has a contract that specifies that they or their designee will pick up storm related debris from these private roads. Also, DEM staff indicated that expanding debris removal to private property would increase the exposure of the state and could be construed as using tax dollars for non-public uses.

During the LCIR's summer meeting, FEMA staff told the committee they were in the process of reviewing their debris removal policy and that a new draft policy should be forthcoming at any time. At that time, Senator Klein requested that a copy of this draft be sent to the LCIR Chair so he could provide it to the committee members. Mr. Cherry said that LCIR staff contacted FEMA numerous times since the meeting requesting a copy of the new draft policy to no avail. He said staff monitored releases from FEMA on a daily basis to track this and other issues and that on September 19, 2005, FEMA released a statement regarding the streamlining of the debris removal process for private property *(Policy Number 9523.13, "Debris Removal from Private Property", September 7, 2005).* This policy change was designated specifically for Louisiana, Mississippi and Alabama for the debris removal process due to Hurricane Katrina. FEMA will now reimburse local governments in those states for debris removal from public rights of way and from private property.

Commissioner Palmer said she had spoken to a representative from the Florida League of Cities and that there was strong support for this recommendation by the League. She indicated that several cities had yet to receive any reimbursement to date and that some had taken out loans for debris removal and were now paying interest. She then asked if this recommendation could include reimbursement for interest, too. Representative Hasner responded that he felt this was an excellent point. He went on to say that problems local governments encountered led to many of the policy options in the report. He supported including the concepts of retroactivity and reimbursement of interest in this policy option. He concluded by saying that it was the Legislature's obligation to work for the citizens and get money owed the state and local governments from the federal government.

Mr. Greer offered that the Osceola County School District is $4.5 million short of their full reimbursement and had to borrow money to pay for this shortfall. Commissioner Welch added that counties are in the same position regarding reimbursement from FEMA. Representative Hasner responded that he believed by addressing these issues and problems there will not be as many complications in the future and that these issues can be resolved. Commissioner Palmer indicated the best way to determine if it is a problem is to see how many communities have requested aid and how many are still awaiting payment. Representative Hasner concurred that this was a good idea and that the Florida League of Cities and the Florida Association of Counties should survey their members for this information and provide it for consideration during the coming year.

Policy Option: Natural Disaster Policy at the Federal Level

State and local policy makers, along with emergency preparedness officials, should continue to monitor the progress of bills in Congress and funding that directly affect natural disaster events and specifically FEMA, its organizational structure and reimbursement processes. Communication with the Florida Congressional Delegation should take place to show support for possible legislation that would aid Florida's state and local governments with emergency management activities.

Mr. Cherry explained that the LCIR survey asked the local emergency managers to identify areas of improvement needed at the federal level with FEMA in dealing with natural disaster situations. A sampling of their responses revealed the most commonly identified areas were consistency in application of debris removal policies, more efficient supply delivery, better training of employees and better coordination with local officials regarding temporary housing.

Policy Option: Nursing Homes and Assisted Living Facilities
The Legislature should direct state agencies to perform a needs assessment with regard to staff and resources necessary to more effectively enforce existing laws regarding business licensure and emergency planning for nursing homes and assisted living facilities.

A great deal of discussion has been generated as a result of recent storms regarding "special needs" populations. Mr. Cherry stated that Florida is home to many elderly and other persons who need a continuous supply of electricity to operate many types of life saving equipment and to keep certain medications refrigerated. He added that home health agencies and hospices must have a Comprehensive Emergency Management Plan (CEMP) that describes policies, procedures, and other requirements the entity will implement before, during and after a natural disaster. However, he noted it has been reported that these requirements, while extensive, often are not enforced due a lack of oversight by state agencies. He explained that during the 2004 legislative session HB 1551 was filed addressing many issues relevant to special needs residents including the establishment of the Agency for Health Care Administration's (AHCA) authority to enforce various provisions in existing law. However, the bill did not pass.

Policy Option: Nursing Homes and Assisted Living Facilities
The Legislature should encourage state and local entities, public and private, to be sensitive to and plan accordingly for changes in health care programs, prescription drug rules and related matters that become effective during the hurricane season.

Mr. Cherry indicated that in times of natural disasters, both the Commissioner of the Office of Insurance Regulation and AHCA Secretary are authorized to take steps that allow those insured to fill their drug prescriptions regardless of how recently they had done so and to authorize payment to pharmacies filling those early refills. This authority originates in the Executive Orders signed by the Governor.

Policy Option: Sheltering, Special Needs and Volunteers
The Legislature should encourage all emergency shelters, whether operated by the Red Cross or local governments, to designate a chain of command consistent with the requirements in National Incident Management System for shelter volunteers at each of the shelters so that there is a clearly identified leadership role at shelters in Florida.

The American Red Cross relies heavily on the participation of volunteers. Not all volunteers are required to take training and that this became most apparent during the 2004 disaster relief effort. Many of the LCIR survey respondents stated that they were disappointed with the staffing situation and leadership presence at shelters and plan to train county and school board staff as shelter managers.

Policy Option: Sheltering, Special Needs and Volunteers
The Legislature should encourage the Red Cross and other shelter operators to develop relationships with the Florida Department of Law Enforcement (FDLE) to institute methods of screening and the Department of Highway Safety and Motor Vehicles (DHSMV) to provide credentialing for volunteers.

Mr. Cherry indicated that because of issues with criminals volunteering at shelters and the fragile emotional state of victims in disasters, the DHSMV, in conjunction with FDLE, plan to implement an on-scene credentialing program in December 2005. The program will have a mobile unit to provide disaster responders with an identification card which would be valid for 180 days.

Policy Option: Sheltering, Special Needs and Volunteers
Amend s. 252.355, F.S., to require electric utilities to communicate more frequently to their customers regarding special needs registration.

Under this statute, electric utilities are required to notify customers of the special needs registration program one time per year. This information should be provided to customers more often, primarily to reach those customers who do not have Internet.

Policy Option: Public/Private Coordination
The Legislature should encourage local governments to include all vital agencies controlling infrastructure within their county, whether public or private, to participate in the activities at the local Emergency Operations Center (EOC).

It is important for public utilities and other infrastructure providers to coordinate with the local EOC to provide assessments of critical needs and restoration of electricity as well as water and sewer capacities. For example, Lee County has had a representative from Florida Power & Light at the EOC, and it was a well coordinated action.

Policy Option: Schools
The Legislature should require the LCIR, in cooperation with the Florida School Board Association, to develop cost estimates associated with the protection and temporary storage of vital records, supplies and equipment contained within each school during a hurricane event.

The LCIR survey results showed that 83% of the shelters opened by respondents were in schools. An issue brought before the committee contemplated how to protect expensive equipment and vital school records, and supplies that may be stolen by thieves taking refuge in a shelter contained within a school. In addition, he said damage to equipment and supplies is not limited to the actual storm event; exposure to heat or moisture afterwards can lead to equipment and supplies needing replacement. Also, a lack of necessary materials could delay the reopening of schools after a natural disaster event. As a solution for this issue, staff proposed that temporary storage for these items could be arranged, thereby protecting vital supply needs and making items attractive to thieves unavailable.

Policy Option: Schools
The Legislature should encourage school districts to include hurricane days in the annual school calendar.

Although 86% of the counties responding to the LCIR survey commented that make up days did not pose a problem for them, other school districts have indicated that this is a huge problem. Additionally, some school districts find that shortening holidays such as Christmas or Spring Break to make up missed days is unpopular, possibly because students and their parents typically plan travel around these times.

Mr. Greer advised the committee to be careful regarding this issue because this would cause school to start earlier and that the extra days should be added onto the end of the school year. Representative Hasner said that this may be an issue that the Legislature takes up next session.

Policy Option: Housing

The Legislature should reconsider fully funding the programs proposed by the Hurricane Housing Work Group that were not funded in last year's $250 million, which included programs that would address housing needs of farm workers and renters (the latter program was only partially funded) and would provide funding for home repairs for certain vulnerable residents, such as the elderly, homeless families and the disabled.

Housing throughout Florida including manufactured and non-manufactured housing for owners, renters and migrant workers was severely impacted by last year's storms. FEMA reported that more than 700,000 homes were affected by the storms, not including homes whose residents reported damages directly to their insurance companies.

In response to the devastation to housing throughout the state, Governor Jeb Bush established the Hurricane Housing Work Group through an Executive Order. The Governor directed the group, led by Lt. Governor Toni Jennings, to address a comprehensive list of post-disaster housing issues. The work group's recommendations were taken up during the 2005 Regular Session and $250 million of the recommendations were funded.

Policy Option: Housing

Upon evaluation of the low interest loan program for retrofitting homes and manufactured housing to strengthen them against hurricane damage established under s. 215.59, F.S., the program should be revised, expanded and funded, if appropriate.

In short, there is a greater need for retrofitting homes and manufactured housing than many residents can afford. Additional financial assistance would be appreciated. Condominium owners have reported a litany of issues somewhat unique to them during natural disasters. For example, many condominium associations have passed by-laws requiring owners to install hurricane shutters which can run into the thousands of dollars.

Policy Option: Housing

The Legislature should explore whether condominium association rules prohibiting pets, emergency vehicles and temporary residents could be suspended during a declared state of emergency.

Some association residents complained of association rules prohibiting certain types of vehicles from parking on site or strict enforcement of rules that allow only people 55 years old or over to reside in the complex. He said these rules impede law enforcement officers or pick-up truck drivers from keeping their service vehicles on the premises of the condominium, and made it difficult for younger family members to assist elderly parents. Representative Hasner asked Mr. Cherry if he had the opportunity to speak to any condominium association members or managers. Mr. Cherry deferred to Carolyn Horwich, LCIR Senior Attorney, who indicated that information regarding this policy option was found in media reports. Representative Hasner responded that some media reports indicated that some condo associations were prohibiting their residents from taking in evacuees during Katrina and possibly other storms because they were not family members.

Policy Option: Manufactured Housing

The Legislature should clarify in law the designation of local governments as the authority to permit and inspect structural changes or rebuilding of manufactured housing and mobile homes.

Mr. Cherry said one of the most common pictures after a hurricane is of devastation in areas where manufactured homes are prevalent. He pointed out while almost 30% of Florida's manufactured housing stock does not conform to the 1976 standards, and less than 15% conforms to the post-1994 standards. Of those homes built to 1994 and post-1994 standards the vast majority withstood last year's storms with virtually no structural damage.

Some local government officials have expressed their belief that it is unclear under current law whether local governments or DHSMV has the authority and responsibility to permit and inspect structural changes or the rebuilding of manufactured housing or mobile homes, leaving somewhat of a vacuum when it comes to ensuring existing standards and procedures are followed.

Secretary Cohen said that manufactured houses are not built to the Florida Building Code. He said there would be, in his opinion, an inability for local building officials to inspect pre-1994 homes due to the fact that there is not a standard for them to be repaired. He added it would be a problem giving local governments a responsibility to enforce a standard they don't have the ability to enforce. In addition, Commissioner Welch expressed a concern of whether local governments would have the capacity to carry out these types of inspections.

Policy Option: Contractors and Post Disaster Repairs

The Legislature should require the Department of Business and Professional Regulation (DBPR) to establish a toll-free telephone number for complaints and verification of contractors' licenses.

In 2004 Governor Bush issued Executive Order 04-188 (signed August 25, 2004) allowing Floridians already holding certain contracting licenses to perform roofing repairs, but only in certain counties. This order was expanded to authorize such repairs in all counties and eventually included out-of-state contractors meeting certain criteria. While this was beneficial in getting repairs done more quickly for some residents, others complained that it is nearly impossible to remedy a situation where an out-of-state contractor has not fulfilled his or her contractual duties and leaves the state. However, under the Executive Order, contractors still must comply with Florida's licensing laws, as well as have the proper training, worker's compensation and insurance.

Currently, there is no toll-free phone number residents can call to get licensure and complaint information, but can do so either by going on-line or paying for a toll call.

Policy Options: Fuel

The Legislature should not implement gas tax holidays that occur during hurricane season to aid in eliminating the possibility of gas shortages during evacuation and post-disaster situations.

The Legislature should explore whether fuel could be staged similar to water and ice.

The Legislature should encourage fuel wholesalers to maintain increased inventories during hurricane season.

Hurricane Frances coincided with the gas tax holiday enacted by the Florida Legislature in 2004. There has been some speculation as to why gas supplies were depleted during this time. There are those who feel that gasoline station owners had depleted their stores of gas in order to avoid pumping gas that was not subject to the tax, while others felt that the demand for gas during the tax holiday period was so high that stations could not maintain adequate fuel supplies.

Liability of Medical Professionals and Other Volunteers During Emergencies

Mr. Cherry pointed out one issue commonly discussed at the LCIR's summer meeting was the issue of liability of medical professionals and other volunteers during emergencies. He said staff research indicates there are currently existing protections available to these individuals:

- ✓ The 1997 Federal Volunteer Protection Act;
- ✓ Florida's Good Samaritan Act; and
- ✓ The Florida Department of Health's (DOH) suggestion that medical personnel align themselves with the Department and serve as volunteers under Ch. 110, F.S., thereby enjoying, for liability purposes, the same statutory protections as DOH employees.

Policy Option: Evacuation Issues

The Legislature should require that as a part of their CEMP all local governments have a specific procedure in place to evacuate those in impoverished communities not having the means to evacuate prior to a disaster related event when they live in a flood or surge prone area or in substandard housing that may not stand up against the storm. A public education program should be implemented regarding pick-up points in these communities and items evacuees can and cannot bring along with them when evacuating. DEM should require local governments along with regional and state responders to test these evacuation plans to ensure that they are functional.

Two more hurricanes hit the Gulf Coast during the writing of this report. Consequently, evacuation issues came to light. Local governments are required to include evacuation plans in their CEMPs, but the level of specificity regarding evacuating specific population groups in many cases is vague. For example, Hillsborough County residents in the south part of the county without the means to evacuate are told to flag down passing school buses in the area. While there are registration procedures in place, it appears many have no idea how they would evacuate. Tampa planners admit the number of buses they have running evacuation routes from the city is inadequate and not well advertised.

Mr. Cherry then concluded his presentation. Representative Hasner thanked Mr. Cherry for his work on the report over the summer and also recognized Carolyn Horwich and Kay Pelt for their contributions. He then opened the floor for questions from the members.

Commissioner Palmer stated that the pet-friendly shelter issue discussed in the report is important due to the fact that many people in harm's way will not evacuate to shelters without their pets. She said this is a big issue in her community. In addition, she pointed out the issue of special needs shelters and asked if more are needed. Also, she stated the importance of medical personnel in shelters and addressing that issue.

Representative Brutus asked if staff looked into the issue of prisons and the evacuation of those facilities as well as exposing communities to criminals during these types of events. Mr. Cherry indicated this was not an issue staff was directed to consider. However, he indicated that staff looked into issues regarding

sexual offenders and predators in shelters. Secretary Cohen said that the Department of Corrections has extensive plans for dealing with prisoners during natural disaster events. He added, however, there might be a problem with local jails and evacuating them, as well as dealing with the issue of holding prisoners during a storm who have not yet been adjudicated.

Senator Jones inquired about the possibility of using trains to evacuate people from areas since they would probably be leaving an area in the direct path of a storm anyway. He indicated this would be a good alternative to putting school buses on already crowded highways.

Commissioner Welch asked about the general shortage of shelter space. He indicated his county has an 80,000 person shelter deficit. Mr. Cherry responded that 83% of schools in the LCIR survey were shelters and the Legislature has appropriated money to harden schools for this purpose. Commissioner Welch responded by saying local governments need help with hardening shelters. Mr. Colvin said one of the benefits of being a high growth state is the new schools being built to accommodate the additional school age population. He acknowledged it was hard to tell if this growth in schools was large enough to address the shortage of shelter space. Commissioner Welch said his county is built out and they do not know how to address the shelter deficit issue.

Commissioner Palmer then inquired about evacuation routes and contra flow and if staff had looked into them. Mr. Cherry responded that this was not an area staff was asked to look at in the report. Secretary Cohen stated that DEM conducts conference calls with local emergency officials twice daily and that evacuation routes and contra flow decisions can be made in coordination with the Florida Department of Transportation, if necessary. He said this type of advance coordination makes it easy to coordinate and keep traffic moving.

Representative Hasner then recognized Craig Fugate from the DEM for his comments. Representative Hasner thanked him for his great work and noted that Florida takes the lead in emergency management nationally.

Mr. Fugate opened by talking about how local groups and agencies did a wonderful job under the circumstances during the storms. He went on to indicate that people who do not prepare for storms prepare to fail. He said that the keys to success were working as a team and exercising, reviewing and critiquing plans to ensure they work when needed. He thanked the Chairman for the opportunity to speak to the committee.

Representative Hasner thanked staff again for their work on the report. A motion to adopt the report was not made.

Other Business

Commissioner Palmer distributed three documents to the members. The first document is a general concept of red tide and how it is related to the dead zone in the Gulf of Mexico. The second one is a story that was in The New York Times which talks about red tide taking its toll on Florida through killing marine life and impacting tourism, and the third is an editorial in the Sarasota Herald Tribune making a case for more funding on research on red tide. She said these three items really summarize the problems the state is facing. She said it is nothing new and affects all of Florida.

There are two issues Commissioner Palmer would like to have the LCIR study and make recommendations to the Florida Legislature. First, the need to increase funding for research, which needs to happen not only at the state level, but the federal level, as well. Second, legislation needs to be initiated to try to restrict the amount of nitrogen runoff that is coming from fertilizers and pesticides and the phosphorus that is making the state's bays and waterways, certainly on the west coast of Florida, hospitable hosts for red tide. Commissioner Palmer said that if Florida loses the beauty of its water, the state's economy will suffer.

Representative Hasner responded that through the Florida League of Cities, the Florida Association of Counties and through membership on this committee, the members can elevate this issue to the Speaker and the President and ask to have the substantive committees in both respective chambers address this issue during the 2006 Regular Session.

A motion was made by Representative Taylor to rise, and the meeting adjourned at 4:50 p.m.

2

Tom Lee
President

Allan Bense
Speaker

The Florida Legislature
LEGISLATIVE COMMITTEE
ON INTERGOVERNMENTAL RELATIONS
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MEMORANDUM

TO: LCIR Members

FROM: Chuck Hungerford, Senior Legislative Analyst

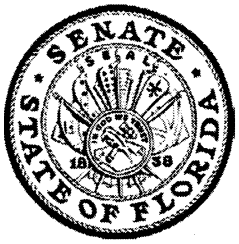
RE: Interim Project Draft Report and Related Materials

DATE: January 5, 2006

Attached is the draft report for the LCIR 2005 Interim Project *Access to Florida Waters: Marina and Dock Permitting, Public Boat Ramps and Port Expansion* and related materials. Docket book materials include:

1. Draft report.
2. Presentation slides for the LCIR January 9, 2006 meeting.
3. Cover Memorandum and List of Operating Agreements between other Agencies and the Florida Department of Environmental Protection. Included as an example are the agreements between the South Florida Water Management District and DEP.
4. Cover memorandum and comments from stakeholder groups regarding the LCIR draft report.

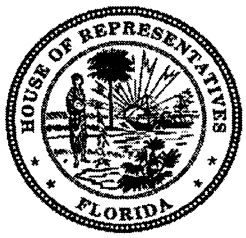
Tom Lee
President



Florida Legislative Committee on Intergovernmental Relations

Draft Interim Project Report

Allan Bense
Speaker



Access to Florida Waters: Marina and Dock Permitting, Public Boat Ramps and Port Expansion

January 2006

I. Project Overview

A. Summary

This project is a consolidation of three proposals considered by the Legislative Committee on Intergovernmental Relations (LCIR) that address various aspects of development or redevelopment on or adjacent to Florida waterways. They are: streamline dock and marina permitting, maintain or increase existing inventory of boat ramps and identify the extent to which deepwater ports are denied building permits by local governments.

Recent legislation directs state agencies and local governments to undertake various actions to consolidate federal and state permitting programs, to maintain or increase public waterfront facilities and to preserve and protect current commercial and recreational waterfronts from conversion to private use. In addition, agencies have initiated studies to inventory waterfront facilities available to the public and suggest methods to expand this infrastructure. Principle recommendations contained in this report direct agencies to monitor progress of these endeavors, evaluate results and report findings including suggestions for program modifications to the Legislature in a timely manner. These reports should assist and guide future legislative action to promote public access to Florida's waterways.

B. Background

Public access to Florida's coastal and fresh waters is an important quality of life issue for many Florida residents and tourists. Equally, Florida's recreational as well as commercial waterfront industries are of significant economic interest for the marine construction industry, related businesses that support waterfront communities and local governments where such communities are located. A recent report estimated that the marine industry provides a total economic output of $14.1 billion and generates more than 180,000 jobs in Florida.[1] In addition, the Florida Seaport Transportation and Economic Development Council reported that in 2002, Florida's 14 deepwater ports produced a total economic impact of $35.3 billion in gross output, supporting 289,000 jobs, $11.2 billion in labor income, $4.2 billion in capital income, and $1.06 billion in state and local taxes and fees.[2]

Florida waters and adjacent wetlands are also home to marine mammals such as manatees and other wildlife enjoyed by Floridians and tourists, and protected under various federal and state laws. These waters also provide critical feeding, filtering, nursery, and shelter resources necessary to support all aquatic animals, including grassbed, marsh, swamp, and mangrove communities. These resources and the quality of these waters must be protected to maintain aquatic productivity and Florida's commercially and recreationally important fishing and aquaculture industries. In addition, these resources should be considered in terms of their economic value, both as submerged public lands and as necessary ingredients to healthy aquatic ecosystems.

Balancing the demands for increased public access to waterways and commercial and residential development to accommodate population growth, while addressing federal, state and local requirements to protect and preserve wildlife and their habitats, remains an ongoing challenge for Florida policymakers.

Based on the public, economic and environmental interests associated with Florida waters and wetlands, the LCIR adopted a 2005 – 2006 interim project to identify major issues involved with

development and redevelopment along Florida waterways, identify current government activities to alleviate those issues and ascertain whether additional legislative action is warranted.

C. Methodology

On June 13, 2005, representatives of federal, state, regional, and local governmental agencies, and of the marine construction industry testified during the LCIR meeting regarding their respective roles in dock and marina permitting, problems agencies and developers experience and current and proposed activities to address such concerns. Additionally, LCIR staff interviewed representatives of the various stakeholder groups and surveyed certain local governments regarding their recreational and commercial waterfronts.

Government agencies participating in this study include the U.S. Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (MFS), Florida Department of Environmental Protection (DEP), Florida Fish and Wildlife Conservation Commission (FWC), Florida Water Management District(s) (WMDs), and county environmental permitting programs. The 14 deepwater ports were surveyed and contacted with follow-up interviews. Contributing organizations to the study representing dock/marina construction industry include the Florida Marine Contractors Association, Marine Industries of Florida, and marine construction contractors and consultants. Conservation organizations contacted during the study include Save the Manatee Club and the Audubon Society. In addition, LCIR staff consulted with legislative committee staff from the Florida Senate and House of Representatives.

D. Organization

Section II presents the major issues regarding marina and dock permitting identified by government and private sector stakeholders and in previous legislative reports. It identifies areas of consensus regarding permitting issues, ongoing activities to address them, and suggestions for future activities. Included in this review are findings from recent studies of boat ramp facilities, major federal and state policies governing marina and dock permitting and relevant litigation. Section III identifies current policies regulating development and expansion of existing deepwater ports in Florida, their governance structures and the extent to which ports are denied building or construction permits by local governments. As issues are addressed, recommendations are proposed.

II. Marina, Dock, and Boat Ramp Permitting Issues

Florida waterways are accessed via marinas, boat ramps and docks. These facilities may be publicly or privately owned. Privately owned facilities may be restricted for private use, opened to the public, or a combination. Boat ramps enable launching of boats from trailers for owners without boat dockage, and as such are considered an important, and to many the only, means for the general public to access Florida's waterways.

In recent years, the Florida Legislature has given much attention towards increasing access to waterways through improvements in the permitting process for new facilities and maintaining or increasing the inventory of facilities available to the public. Research findings and subsequent legislative actions relative to permitting issues identified by stakeholder groups during the interim are presented below.

A. Major Permitting Issues

Representatives from federal, state, regional, and local governmental agencies and the marine construction industry testified before the LCIR regarding major marina and dock permitting issues and possible ways to streamline the process. Additional materials concerning marina and dock issues were submitted to committee staff during the interim. While certain issues raised by each stakeholder group were unique to those groups, other themes were shared, including: lack of coordination and length of permit application reviews, protection of natural resources, navigation and public safety, inadequate resources for reviews, and conversion of public waterfront facilities for private use. Major issues presented by each stakeholder group are presented in Attachment A.

The common themes among these stakeholder group responses are presented within the broader framework of waterfront related issues considered by the Legislature and state agencies in recent years. This framework is built upon recent legislative committee and agency studies, study recommendations and subsequent legislation which contain certain recommendations.

1. Lack of Agency Coordination and Length of Permit Application Reviews

a. LCIR Stakeholder Issues

A perceived lack of coordination among regulatory agencies in conducting permit application reviews is a major point of contention of marine contracting interests. It is also cited as a cause of confusion by homeowners unfamiliar with the permitting process, which also serves to exacerbate their feelings of frustration. Factors credited with contributing to the perception that problems in coordination exist include conflicting permit review criteria and litigation among stakeholder groups. Inadequate coordination is associated closely with the length of time required to have a permit application reviewed and approved by all permitting authorities. The marina contracting industry suggested that several existing permit reviews were duplicative or otherwise unnecessary. Other comments questioned whether permits should be reviewed concurrently rather than consecutively by reviewing agencies.

In contrast, representatives of the regulatory agencies generally held that a great deal of coordination occurs among federal, state and local agencies throughout the permitting review process. The fact that different permitting agencies may arrive at differing conclusions regarding the "permittability" of a project, or the conditions that should be attached to the authorization is due more to their varying jurisdictions and underlying legal constraints, rather than a lack of coordination. As an example of this type of constraint, DEP staff identified a 2000 lawsuit that prevented the issuance of federal permits for certain dock and marina construction that had been approved by the state. In this instance, federal permits were not issued until the lawsuit was resolved despite extensive coordination among federal and state permitting authorities.[3] Agency representatives also noted that the vast majority of single family dock projects and many boat ramps are already authorized at the state level by statutory and rule exemptions, which require little if any coordination other than distribution of applications to local and federal agencies.

Agency responses did acknowledge that the permitting process may sometimes be lengthy and complicated, and may not produce the results that some would want, however, this is not unexpected given its diverse and sometimes conflicting purposes. For example, protection and preservation of natural resources is a primary function of all wetlands permitting including marina, docks and boat ramps. In addition, permitting has been described as the means to maintain a balance between addressing the demand for growth with protection of natural resources. These resources include various marine and wetland wildlife, habitats, specific vegetation, seagrasses, and entire coastal and wetland ecosystems. An important function of permitting from the federal perspective is that the review of marina and dock permit applications serves to maintain open waterways and as such, ensures that such developments would not threaten public safety or hinder water transportation. Many of the early federal regulations were directed to protect transportation of commerce.

b. Senate Committee on Community Affairs Study

A recent report by the Florida Senate Committee on Community Affairs suggests Florida exhibits a diminishing capacity to meet the demand for public access to its waterways.[4] One major impediment to development of new waterfront access, as noted by representatives of marine construction contractors, is government approval of proposed developments. Obtaining required permits for new or expanding marinas are considered by the industry to be expensive and time consuming. Government regulations identified in the study as most burdensome to marine construction include the following provisions:

- Permit applicants must obtain approval of both state and federal agencies.[5]
- The Corps requires public safety and navigability of waterways, as well as protection of manatees, habitat and other wildlife, or permits may not be approved if such safety, navigability, or protection is compromised.
- Permits for new or expanded large-scale projects may be delayed or denied in counties without Manatee Protection Plans. Eleven of the thirteen counties required by the state to have approved Plans have complied.[6] The two counties without approved Plans in place are Broward and Palm Beach counties.
- State permits are issued by DEP or WMDs depending on location and type of development and associated upland development (e.g., marina, restaurant, condominiums). Certain types of modifications to project proposals trigger

additional permit review or a review by another regulatory agency.[7]

- In situations where final agency action for activities on state submerged lands that are not delegated to staff, which may occur with projects seeking permits for facilities of more than 50 slips, projects of "heightened concern" and permits for use of sovereignty submerged lands must be reviewed and approved by the Florida Board of Trustees (the Florida Governor and Cabinet).[8]
- Marinas with 150 or more wet slips, or 200 dry slips, must be approved under the Development of Regional Impact (DRI) program through the Department of Community Affairs (DCA), in addition to securing DEP permits.[9] However, counties and municipalities with a boating facility siting plan in the coastal management element or land use element of their local comprehensive plan are exempt from the DRI program.[10]

DCA staff report that to date, five local governments: Collier County, Jacksonville/Duval County, Sarasota County, City of Stuart, and City of Holly Hill have implemented boating facility siting plans in their comprehensive plans; and Volusia County and certain municipalities within the County are in various stages of the comprehensive plan process for adopting their boating facility siting plans into the comprehensive plan.[11] DCA has published a best management practices manual for marina siting to assist local governments in preparing a boating facility siting plan.[12]

LCIR Recommendation 1:

Encourage local governments to establish a boating facility siting plan within the coastal management element or land use element of their local comprehensive plan and direct DCA to assist local governments in the utilization of the department's best management practices manual for preparing a boating facility siting plan and to report annually on siting plans established to the President of the Senate, Speaker of the House of Representatives and the LCIR no later than September 30 of each year.

c. 2005 Legislation

Several bills enacted during the 2005 Regular Legislative Session addressed means to improve the permitting process for waterfront developments. One bill, HB 955 (Ch. 2005-157, L.O.F.), derived from the Senate Committee on Community Affairs' report "Working Waterfronts", directs DEP and, as appropriate, WMDs to adopt programs to expedite the processing of wetland resource and environmental resource permits for marina projects that reserve at least 10 percent of available boat slips for public use.[13]

The extent to which an expedited permit will induce developers to reserve 10 percent of boat slips for public use is unknown. The marine construction industry may find this set aside a fair price for the certainty of a quick permitting decision. Alternatively, developers may determine that costs savings due to the expedited permitting process are insufficient incentive to offset lost profits from private sales or lease of boat slips.

However, DEP staff suggests that the bill did not provide any specific legislative authority, as is required under Ch. 120, F.S., for any rulemaking or specific programs that can achieve the intended "expediting." Because of this, there is no mechanism or way to identify what facilities should qualify for the expediting, what criteria can be waived to affect the expediting, and, even if there were, no way to also achieve expediting with local and federal agencies. As such, no mechanisms have been developed to track such facilities in DEP's permitting data base, and therefore there currently does not exist any way to provide the information requested without a significant expenditure of resources—resources that are needed to process the permits and authorizations that are desired as expeditiously as possible.[14]

Given the potential impact of this program, it is appropriate for the Legislature to monitor the effect of this expedited process on waterfront developments.

LCIR Recommendation 2:

Direct DEP to monitor and report annually on the impact of the expedited permit program as implemented by DEP and WMDs to the President of the Senate, Speaker of the House of Representatives and the LCIR no later than September 30 of each year. The report shall identify the number and location of permit applications, permit review findings, the program's impact on the inventory of private and public boat slips and, if appropriate, recommendations for program improvement.

A second bill enacted in 2005, HB 759 (Ch. 2005-273, L.O.F.), directed DEP to develop a strategy or plan to consolidate, to the maximum extent practical, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetland and other surface waters, including navigable waters, through Florida's environmental resource permitting program (ERP).[15]

The plan is to address various scenarios whereby the state and federal government would agree on coordinated permitting processes. Possible scenarios include the state's complete assumption of federal permitting responsibilities, with the state authorized to issue permits in lieu of federal permits; an expansion of the State Programmatic General Permit program (SPGP), whereby the state would issue permits on behalf of the federal government for projects of a defined and limited impact; or creation of a series of regional general permits.[16]

In its response to the directives in Ch. 2005-273, L.O.F., DEP submitted a report which identified relative impacts from consolidation of federal and state wetland permitting programs, expansion of the existing SPGP program and provided recommendations. The report also identified federal and state statutory changes necessary to enable state assumption of federal wetland permitting.[17]

DEP's report suggested that state assumption of the federal permitting responsibilities is not advisable at this time for several reasons. First, the workload associated with the transfer of federal permitting far exceeds the resources currently available to DEP and WMDs. For example, the current federal permitting workload is estimated at 9,700 of which 3,000 permit actions would be transferred to DEP and the remaining 6,700 would be transferred to the WMDs. This wholesale transfer would overwhelm the existing review capacity at the state and district levels and result in delays for applicants.

Second, assumption of federal permitting regulations would require significant changes to federal and state laws. Examples of such changes include elimination of the automatic "default" issuance of permits that are not processed within the state's generic 90-day permitting clock and revision of current dock exemptions to account for water depth, endangered species protection, protection of on-site submerged resources, and other requirements of the Corps and other federal agencies.

DEP's recommendation is to expand the SPGP program in the short-term while also pursuing federal and state legislative actions that would enable the state to assume greater wetlands permitting authority in the future. Implementation of its recommendations would include the following steps:

- Continue to reduce differences between state and federal wetland delineations without altering the statutory definitions of wetlands.
- Request the Corps to expand the SPGP to a comprehensive list of activities with impacts to no more than a specified acreage of non-tidal wetlands based on Florida's wetland delineation methodology.
- Request that the expanded SPGP include projects reviewed by the WMDs and local delegated programs.
- Review existing state statutes and rule exemptions and noticed general permits for modifications necessary to ensure that qualification for these authorizations would meet the requirements for authorization under the SPGP with no federal agency coordination requirements.
- Extend SPGP in Northwest Florida by expanding the state wetlands program to the Northwest Florida Water Management District (currently excluded due to inadequate district resources to administer the plan).
- Seek the support of the Florida Congressional Delegation on opportunities to amend the Federal Clean Water Act and Rivers and Harbors Act to make assumption of the federal wetlands program viable.
- Consult with the Florida Legislature on the potential for appropriating to DEP the additional resources that would be necessary to assume the federal wetlands permitting program and the transferred federal permitting and compliance workload, should assumption become a viable option. Additional resources would also be necessary for the WMDs.[18]

DEP provides several options for streamlining federal and state permitting policies regarding waterfront facilities. Immediate state assumption of these federal permitting responsibilities appears beyond the fiscal and structural capacity of DEP and

the WMDs.[19] The only potentially viable alternative at this time involves consideration of a plan for expansion on certain current permitting responsibilities relative to the SPGP and a strategy for assumption of additional federal permitting responsibilities in the future. However, it must be stressed that, at this time, the federal wetlands permitting agencies have shown no interest in expanding the scope of projects covered by the SPGP, and in fact are suggesting reducing the scope of activities covered under the SPGP.

LCIR Recommendation 3:

Support the recommendation contained in the DEP report dated September 30, 2005 to expand the current SPGP and steps to enable the state to assume greater wetlands permitting authority in the future.

2. Insufficient Public Boating Facilities

a. LCIR Stakeholder Issues

Representatives of regulatory agencies indicated that the demand for boat docks and boat ramps is outpacing their ability to site and permit them. Explanations for this relative shortage include lack of staff resources, dwindling supply of waterfront properties appropriate for development, and increased sensitivity to protect and preserve marine wildlife and habitat.

b. Senate Committee on Community Affairs Study

The "Working Waterfront" study by the Senate Committee on Community Affairs found a relatively stagnant supply of boating access facilities amid growing demand. Since 1987, there has been no change in the number of marinas in Florida, a decline in dry storage units and a small increase in marina slips and boat ramps and ramp lanes. Although the number of boat ramps and ramp lanes increased slightly statewide, the public's relative access declined due to the increase in the number of registered boats in the state and is particularly evident in Florida's urban counties. Launching capacity of boat ramps is the major problem, however, lack of parking for vehicles and trailers are additional indicators that existing facilities may be inadequate.[20]

In contrast, research conducted by DEP and Save the Manatee Club suggests the number of public boating facilities in Florida is increasing. For example, based on studies conducted by DEP during the period 2001 through 2004, there were 1,175 state-owned submerged lands leases for public access facilities and state park boat ramps. Of these, 400 were for commercial marinas, 454 were for docking facilities at condominiums, 223 were for other multi-family residential docking facilities, 70 were for yacht and country clubs, and 28 were for public/local government facilities. Of those facilities, 41 were observed to have experienced an increase in the number of "open to the general public" boat slips, and 50 experienced a decrease in the number of "open to the general public" boat slips. In 2003-2004, 47 percent of the 27,978 boat slips reported to be on sovereignty submerged lands were open to the public. The total number of boat slips under lease ranged from 17,975 in 2002 to 28,581 in 2003, and the number of "open to the general public" boat slips was as high as 14,630 in 2003, but declined to 11,742 in 2004. While the number of boat slips has been increasing, the percentage of slips on sovereignty submerged lands open to the public decreased by 22 percent during 2001-2004.[21]

The Senate Committee on Community Affairs' study also noted that between 1987 and 2003, the number of registered boats in Florida increased by more than 50 percent from 650,000 to nearly one million registered boats. In comparison, during the same time period, Florida's overall population rose by less than 15 percent from 14.8 to 17 million residents. Additional demands for waterfront facilities are made by visiting vessels registered in other states.

c. 2005 Legislation and DEP Study

Provisions in legislation enacted in 2005 seek to identify the number of waterfront facilities available to the public and increase their number. The "Working Waterfronts" bill, HB 955, directs DEP, in coordination with FWC, to undertake a study evaluating the current use of state parks for purposes of recreational boating, identify opportunities for increasing recreational boating access within the state park system, and submit findings and recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 1, 2006.[22]

Preliminary findings indicate more than 60 percent of the 129 state parks currently provide boating

access. Boating access includes boat ramps, convenience docks, boater access docks, and canoe and kayaking access points. Expanding boating access in the park system is accomplished through increased vehicle and trailer parking facilities and adding to the number of waterfront points of access. Size of parking facilities is determined by the estimated carrying capacity of the park, i.e., the number of boats the park's water body can accommodate, as well as the fiscal resources to develop, staff and maintain the parks' infrastructure.[23]

Recommendations contained in DEP's boating access report, due by January 1, 2006, propose waterfront and related developments and associated cost estimates.

LCIR Recommendation 4:

The LCIR should review and consider for future action, those recommendations presented in the DEP study to promote recreational boating at state parks.

Another bill enacted during the 2005 Regular Legislation Session, HB 989 (Ch. 2005-158, L.O.F.), includes provisions to maintain, if not increase, the public's access to waterways via public marinas, public mooring fields, and public boat ramps.[24] Provisions within the bill direct DEP to establish a general permit or permits authorizing local governments to construct, operate and maintain public marina facilities and public boat ramps including associated courtesy docks and associated parking facilities located in uplands. Such facilities may not exceed an area of 50,000 square feet over wetlands or other surface. The bill also requires the development of a general permit for public mooring fields. It should be noted, however, that a statutory exemption for the construction of boat ramps in artificial waters and certain public boat ramps in other waters already exists in s. 403.813(2)(c), F.S.[25]

The conditions of the general permit or permits must comply with Part IV of Ch. 373, F.S., s. 373.118(1), F.S., and the criteria necessary to include the general permits in a state programmatic general permit issued by the Corps under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C., ss. 1251 et seq.

As an incentive to gain local governments' participation in the program, each facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. In addition, the facilities are required to be consistent with the local government manatee protection plan required pursuant to Ch. 370, F.S., and to obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility.

The extent to which local governments will seek a general permit or permits from DEP for public marinas and boat ramps is unknown. The local government revenues generated from these facilities and the benefits local economies derive from them may provide insufficient influences to stave off privatization. Alternatively, local demand for public access to area waterways and public desire for revitalized waterfront communities may prove more attractive to local policy makers than projects supporting private use developments.

It would be beneficial to gauge the extent local governments find this general permit program useful in promoting public access to waterways.

LCIR Recommendation 5:

Direct DEP to report annually on general permit(s) issued to local governments and the size and characteristics of the facilities established under such permits to the President of the Senate, the Speaker of the House of Representatives and the LCIR no later than September 30 of each year.

FWC is conducting a boating access facilities inventory and economic assessment study. The purpose of the study is to: compile a comprehensive statewide inventory of boating access locations and facilities and make it available to the public by internet; provide a basis for policy makers at state and local levels to evaluate programs affecting boating and future boating needs; and facilitate the performance of economic analyses of the boating industry to establish its value to the state's economy, quantify supply and demand and estimate future investments.[26]

Currently, there is no comprehensive statewide recreational boating inventory of public and private facilities in Florida, or any other state, for all

environmental types, i.e., saltwater, freshwater and brackish water. There are, however, inventories of individual areas within the state that have been compiled by various local governments and special districts. In addition, as noted above, DEP in cooperation with FWC is currently evaluating the state's park system to identify opportunities for additional boating access within the park system.[27] Statewide, ramps and facilities are being converted from public use to private use and, thus, limiting the public's access to Florida's waterways. Many state agencies and local governments have expressed the need for boating access facilities information that could be used for comprehensive planning, tourism and other uses.

The FWS provides a grant program to the states for boating access purposes. FWC receives approximately $1.1 million per year from this program. As part of the grant program, states are required to provide a boating access needs assessment. The FWC study is Florida's effort to comply with this requirement. The FWS has approved $1.3 million to fund the study and FWC is providing a 25% match to this federal funding.

FWC staff report that it has entered into a contract with the University of Massachusetts Boston (UMB) to conduct the study over the course of two years, in conjunction with Florida Atlantic University, Florida Agricultural and Mechanical University, Bordner Research, Inc. of Clearwater, and Michigan State University. Lee County, as the pilot county for the study, has committed $100,000.

The study comprises three phases: 1) inventory; 2) global information system (GIS) mapping of facilities; and 3) economic assessment. Phase 1, currently in progress, is inventorying marinas, dry storage, mooring fields, boat ramps, and public and private docks to provide an accurate count of facilities in saltwater, freshwater and brackish water environments. UMB is utilizing as much existing inventory data as is available, so as not to duplicate research. This phase will take one year, as the collection of data must be completed multi-seasonally to effectively estimate the boating demands throughout the year.

Phase 2 will employ a global positioning system (GPS) to obtain the latitude and longitude of each facility. This information will be used to generate GIS data layers to develop comprehensive maps of boating access facilities in Florida. Phase 3, the economic assessment component, will provide present and projected (through 2020) boating access supply and demand comparisons of boating facilities statewide, develop use profiles of current facilities, identify what capital costs will be necessary to meet future access demand, and characterize recreational boating preferences, activities and water use patterns.

The 2005 storms in Florida created additional demands on state agencies workloads and other administrative assignments and as a result, reduced the progress with the study. Staff at FWC has communicated that the study will soon be on schedule as originally planned. Currently, FWC provides project status updates on an ad hoc basis to staff of Senate and House appropriation subcommittees and substantive committees on the environment.

LCIR Recommendation 6:

Given the importance of public access to Florida waterways and the interest of the Florida Legislature on these issues, direct FWC to report annually on the status of the study to the President of the Senate, the Speaker of the House of Representatives and LCIR no later than September 30 of each year. The report should include recommendations on resource requirements to maintain a current inventory.

LCIR Recommendation 7:

Direct FWC to develop a methodology to evaluate the usefulness of products generated in each phase of the study to the state, regional and local stakeholders and methods considered for communicating the products availability to them.

3. Conversion of Commercial and Recreational Waterfronts

a. LCIR Stakeholder Issues

Conversion of commercial and recreational waterfronts to private marinas or private residences is recognized as a major factor contributing to the diminished public access to Florida waterways. Representatives of local governments identified changing economies as the major cause for the conversion. Faced with rising overhead costs, shrinking income potential and escalating waterfront property values, traditional working waterfront

owners often are pressured to cash out to private developers. Representatives of the marine construction industry respond that in many Florida communities, commercial and recreational waterfronts are the only waterfront properties available for redevelopment.

b. Senate Committee on Community Affairs Study

The commercial fishing industry has found it more profitable, and sometimes necessary, to convert waterfront property for other purposes. Several factors have contributed to this conversion. For example, the 1994 constitutional net-ban and other regulations in conjunction with increased competition from imported seafood have reduced income potential of commercial fisheries.[28]

In addition, higher waterfront property values have increased property taxes and thereby increased operating costs. Regulatory impediments to new marina development increase the attractiveness of existing commercial fishing waterfronts to residential developers. Essentially, developers find it easier and more profitable to purchase a commercial waterfront for the purpose of converting it to residential or other private purposes than developing a new marina from property with other land uses.

It should be noted that existing commercial fishing waterfronts are typically located in the best areas for marinas—that's why they were built there in the first place. In addition, with the value of waterfront property, commercial fishing waterfront as a land use is often a low value use compared to the land value.

County and municipal governments and representatives from the recreational boating industry report loss of public access to recreational working waterfronts as a result of conversion to private marinas, dry docks, or private residential uses. In addition, damage to recreational waterfront facilities from recent hurricanes reportedly has further reduced the number of publicly accessible waterfront facilities, prompting DEP to take special action in restoring damaged facilities.[29]

c. 2005 Legislation

Several provisions of HB 955 (Ch. 2005-157, L.O.F.) address concerns with the loss of public and working waterfronts. Two provisions in the bill require comprehensive plans to include within certain elements of the plan efforts to preserve recreational and commercial working waterfronts. These elements include the future land use element, the recreation and open space element and the coastal management element.[30]

Another provision of the 2005 bill establishes within DCA, the "Waterfronts Florida Program" to provide technical assistance, support, training, and financial assistance to waterfront communities in their efforts to revitalize waterfront areas.[31] Program priorities are to: protect environmental resources, provide public access, mitigate hazards, and enhance traditional economies and promote additional economic opportunities. The type of waterfront facilities promoted in the program include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Communities selected for the program receive intensive technical assistance in developing revitalization plans and a grant of $25,000 per year for two years. In 2005, five communities were added to the existing 13 waterfront partnership communities.

Two additional provisions of law recognize financial realities to preserve working waterfront facilities. The first provision requires that $1.00 from fees paid on boat registration be deposited into the Marine Resources Conservation Trust Fund for public launching facilities and gives priority to counties with more than 35,000 registered vessels.[32] The second amends various statutes to create a tax deferral program for owners of recreational and commercial working waterfronts to encourage them to maintain the current use of the property.[33]

LCIR Recommendation 8:

Direct DCA to report on the compliance of local governments to amend the required elements of their local comprehensive plans and incorporate these waterway preservation provisions at the time of their next Evaluation and Appraisal Report (EAR) and EAR-based amendments to the President of the Senate, the Speaker of the House of Representatives and the LCIR.

LCIR Recommendation 9:

Direct DCA, in consultation with DEP, to evaluate the impact of the Waterfronts Florida Program and its predecessor, the Waterfronts Florida Partnership Program, to assist waterfront communities in their efforts to revitalize waterfront areas. The evaluation shall include assessment of the extent to which the program's priority concerns are addressed. The evaluation may derive from federal program assessment requirements. DCA shall report findings to include any recommendations for program modifications to the President of the Senate, the Speaker of the House of Representatives and LCIR by September 30, 2007.

LCIR Recommendation 10:

Direct DCA, in consultation with DEP, to monitor the effectiveness of the tax deferral program to maintain recreational and commercial working waterfronts and report findings to include any recommendations for program modifications to the President of the Senate, the Speaker of the House of Representatives and the LCIR no later than September 30 of each year.

III. Florida Ports and Development Issues

Florida's 14 deepwater ports are established by special acts of the Legislature and comprise the ports of Jacksonville, Canaveral, Fort Pierce, Palm Beach, Everglades, Miami, Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.[34] Unlike marinas and docks that primarily serve residential and recreational needs of Florida residents and visitors, Florida deepwater ports principally function to foster the growth of domestic and foreign waterborne commerce and to enable the seaports to compete effectively in global markets.[35]

Redevelopment and expansion of these ports are important issues given their status as valuable economic assets to their host communities and to the state as a whole and potential impact on growth management laws. The Florida Seaport Transportation and Economic Development Council reported that in 2002, Florida's 14 ports produced a total economic impact of $35.3 billion in gross output, supporting 289,000 jobs, $11.2 billion in labor income, $4.2 billion in capital income, and $1.06 billion in state and local taxes and fees.[36]

This section summarizes current state policies that regulate port expansions and presents findings of a survey conducted by LCIR staff on experiences between ports and local governments regarding port development activities. The primary focal purpose of the survey was to determine whether ports are denied permits to expand their facilities and services under current state or local policies.

A. Port Development within Local Comprehensive Planning

1. Coastal Management Plan and Port Master Plan

Florida growth management regulations require local governments located along the coastal areas to include a coastal management element in the local comprehensive plan.[37] The coastal management element is to address, among other issues, the orderly development, maintenance and use of the 14 deepwater ports to facilitate deepwater commercial navigation, and other related activities. Coastal management provisions require that each deepwater port submit a master plan that addresses existing port facilities and any proposed expansions to the appropriate local government and shall be integrated with and meet all criteria specified in the coastal management element of the local comprehensive plan.[38]

2. Development Agreements

In recognition of the state's commitment to deepwater ports and as an incentive to promote plan consistency, expansions of port facilities are not considered to be developments of regional impact (DRI) where such expansions, projects, or facilities are consistent with comprehensive master plans that are in compliance with the coastal management element. These ports are not subject to DRI reviews, provided a development agreement is reached with government authorities. This requirement can be met in several different ways:

- An alternative comprehensive development agreement is reached with affected local governments pursuant to ss. 163.3220-163.3243, F.S.,
- Port authorities enter into a development agreement with the state land planning agency and applicable local governments pursuant to s. 380.032, F.S., or
- Where the port is a department of the local government, the local government successfully

enters into a development agreement with the state land planning agency pursuant to s. 380.032, F.S.

3. Conflict Resolution Process
In execution of their responsibilities to increase productivity and performance of ports and maintain high levels of efficiency, port authorities will propose development and expansion activities that may differ from planning and growth management policies or perspectives of their host local governments. In order to address such differences and reduce the potential negative effects from prolonged litigation, the dispute resolution process provided for in s. 186.509, F.S., must be used to reconcile inconsistencies between port master plans and local comprehensive plans.[39]

B. Port Survey
In order to ascertain the relationship between deepwater ports and local governments relative to operational or infrastructure changes, LCIR staff surveyed all 14 port authorities. Each port was asked to describe its governance structure and boundaries, identify the local government to whom they submit a master plan, whether the port was ever denied a building or development permit by the local government, and if so, to what extent, and how the issue was resolved. Eleven of the 14 ports (80 percent) responded to the survey.[40] Their responses are presented in Table 1.

1. Governance and Boundaries
The Legislature may establish port authorities as independent special districts or as an agency of a local government. Port authorities initially established as districts may be later transferred to a local government. Important distinctions between an independent special district and a local government agency are that independent districts have revenue raising authority, budget autonomy and either elected or appointed board members as specified in their enabling legislation and charter. As noted in Table 1, 6 of the 11 ports responding to the survey are independent special districts and the remaining 5 ports are departments or agencies of local governments.

There does not appear to be a strong relationship between port boundaries and the governance structure of port authorities. For example, three independent special district ports fall within the jurisdiction of county government and three have boundaries located in multi-jurisdictions. Of the three ports that function as an agency of county government, two have boundaries that encompass multiple local governments and only Port Miami-Dade contains property limited to the unincorporated area of the county. However, the two ports that function as an agency of municipal government are wholly contained within their respective city limits.

2. Local Comprehensive Planning Process
Ports were asked to identify the local government to which the port submitted its master plan. Nine ports responded that their master plan was submitted to their host county government. Only Port Panama City and Port St. Petersburg, the two ports that function as part of city government, reported submitting master plans to their respective city governments. As noted below, ports are required to secure building or development permits from local governments where port development is proposed regardless of the unit of government to which the port submits its master plan. For example, while Port Fernandina may submit its master plan to Nassau County government, proposed port developments that fall within the city limits of Fernandina Beach would require building permits from the city. This permit review authority is consistent with a 1982 Attorney General Opinion supporting a local government's claim that port authorities are also required to secure appropriate building permits for construction of buildings from host local governments.[41]

3. Building or Development Permits
The survey requested port authorities to identify the number of times, if any, that a building or development permit was denied by a county or municipal government between 1995 – 2005, the type of project and reason for denial and whether the permitting issue was resolved through a negotiated process or litigation. As presented in Table 1, seven ports reported never being denied a permit and five ports noted one or more occasions where they were denied a building or development permit by a local government.[42] With one noted exception, in each case where a permit was initially denied, the port and local government resolved the issue through a negotiated or mediated process.

The exception involved Port Everglades and the City of Ft. Lauderdale where the footprint of a proposed cruise line parking garage was reported to have encroached 25 feet into an adjacent DRI project. Port Everglades initiated the process of a Notice of

Proposed Change (NOPC) to modify the boundaries of the DRI project in order to accommodate the cruise parking garage. The NOPC was approved by the City of Ft. Lauderdale Planning and Zoning Board on December 15, 2004, but has not as yet been scheduled as an item on the Ft. Lauderdale City Commission's Meeting Agenda for approval. At this time, Port Everglades, a department of Broward County government, has withdrawn the contract for the cruise parking garage.

LCIR Recommendation 11:

No policy change appears warranted at this time. With one noted exception, current policies enable port authorities and local governments to resolve permitting concerns.

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Table 1
Florida Port Survey

Ports	Governance	Boundaries	Local Comprehensive Plan	Development Permit Denied 1995-2005	Permit Denial Resolution	Permit Denial Litigation
Canaveral	Independent District	Brevard County	Brevard County Govt.	No	N/A	N/A
Everglades	Department of Broward County	Multiple jurisdictions	Broward County Govt.	Denied - Ft. Lauderdale; encroached on adjacent area; City P&Z board approved change, City Commission not yet reviewed	Denied - Hollywood; project required fire sprinkler; plans modified and permit approved	No
Fernandina	Independent District	Fernandina Beach and Nassau County	Fernandina Beach and Nassau County Govt. depending upon location of project	City ordinance prevented expansion into adjacent properties	Ordinance changed to accommodate cargo expansion project	N/A
Fort Pierce	Department of St. Lucie County	Multiple jurisdictions	St. Lucie County Govt.	No	N/A	N/A
Jacksonville	Independent District	Duval County	Consolidated Jacksonville and Duval County Govt.	No	N/A	N/A
Manatee	Independent District	Manatee County	Manatee County	No	Negotiated settlement between county and port staff	N/A
Miami-Dade	Department of Miami-Dade County	Miami-Dade County	Miami-Dade County Govt.	No	N/A	N/A
Palm Beach	Independent District	Multiple jurisdictions	Palm Beach County Govt.	Height variance issue; zoning issue	Mediated settlement	N/A
Panama City	Department of City of Panama City	Panama City	Panama City	No	N/A	N/A
St. Petersburg	Department of City of St. Petersburg	St. Petersburg	St. Petersburg	No	N/A	N/A
Tampa	Independent District	Multiple jurisdictions	City-County Planning Commission	No	Staff met and resolved issues	No

Attachment A

Marine and dock permitting issues identified by stakeholder group during presentations before the June 13, 2005 Legislative Committee on Intergovernmental Relations meeting, materials submitted to LCIR staff, or communicated through staff interviews.

1. U.S. Army Corps of Engineers (Corps)

- Maintain navigability and safety of waterways.
- Protect natural resources under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.
- Litigation led to reduction in coordination with permit reviews.

2. U.S. Fish and Wildlife Services (FWS)

- Confusion among various stakeholders regarding protection of manatees under Endangered Species Act and the Marine Mammals Protection Act.
- Lengthy reviews of applicant's projects.
- Uncertainty of outcomes from review of applicant's project and inconsistency between reviews of project from resource agencies (e.g., FWS and Florida's Fish and Wildlife Conservation Commission).

3. Florida Department of Environmental Protection (DEP)

- Locations most appropriate for marina and docks utilized, remaining less appropriate sites for marina and docks require more detailed review and mitigation.
- Staff and fiscal resources not always readily available for detailed site and mitigation reviews.
- DEP and WMDs have split responsibilities to minimize overlap and streamline permitting, but more can be done.

4. Southwest Florida Water Management District (SWFWMD)

- Recognizing importance of permitting of docking facilities; quality of water, fish and wildlife protection; maintaining wetlands and aquatic resources; and public interest.
- Rules and laws regulating permitting, such as timeclocks for evaluation of permit application, are important and require fiscal and staff resources.
- Dock permitting associated with upland development permit application can be accomplished sequentially or concurrently, with the latter shortening review time.

5. Palm Beach County Government

- Generating data and information necessary to protect resources.
- Resources in most need of protection include manatee, sea grasses and habitat.
- Major planning problem is lack of prepared mitigation program.
- Federal agencies are not on the same timeclocks as state agencies, WMDs and local governments regarding permit application reviews.
- DEP and WMD application reviews add value to the process while federal agency reviews add no such value.

6. Pinellas County Government

- Lawsuits regarding manatee protection stifled permitting by the Corps.
- WMDs recent increase in level of involvement in dock permitting has created additional uncertainty by stakeholder groups.

- DEP district office recently stepped up enforcement in Pinellas County which contributed to sense of uncertainty by stakeholders in marina and dock permitting.
- Waterfront development practices changing with developers seeking more boat slips through redevelopment of existing waterfront sites.
- Changes in processes and procedures also include changes in interpretation of existing rules and promote confusion among stakeholder groups, particularly developers.

7. Florida Marine Contractors Association and Marine Industries of Florida.

- Inconsistency within and conflict between agency regulations of dock and marina permitting.
- Delays in permit reviews are a major problem, with the Corps most likely to cause delays and DEP least likely to cause delays.
- Costs associated with time lost are measured in lost projects and money; consequently one-third of marine construction is performed without permits.
- Loss of access to waterways statewide is due to permitting process problems.

8. Marina Contractor and Consultant

- The environmental resource permitting program (ERP) administered by DEP should be reviewed and amended to remove unnecessary obstacle to marine projects.

9. Save the Manatee Club

- An overall lack of planning for waterway access needs relative to balancing waterway access with aquatic ecosystem protection.
- The current low cost of state submerged lands fees and leases is fueling conversions of public marina to private condominiums.
- Conversion problems are exacerbated in counties where most of the best marina locations are already used and replacement facilities are likely to have substantial environmental problems.
- Lack of reliable data on baseline boating information or future supply and demand for boating facilities.

END NOTES

[1] Thomas J. Murray and Associates, "Florida's Recreational Marine Industry – Economic Impact and Growth 1980-2000," March 2001. Prepared for the Marine Industries Association of Florida, Inc.
[2] Florida Seaport Transportation and Economic Development Council, A Five-Year Plan to Achieve the Mission of Florida's Seaports: 2004/2005 – 2005/2009, February 2005.
[3] In Save the Manatee Club, et al. v. Ballard,et al., Civil No. 00-00076 (D.D.C.), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, MMPA, National Environmental Policy Act (NEPA), and Administrative Procedures Act. Four groups representing development and boating interests intervened. Following negotiations, a Settlement Agreement was approved by the court on January 5, 2001. The preparation of this Environmental Impact Statement (EIS) and publication of a final MMPA incidental take determination in the Federal Register is required under the terms of the Settlement Agreement.
[4] The Florida Senate Committee on Community Affairs, Interim Summary Report 2005-122, Working Waterfronts, November 2004.
[5] DEP reports that over the past five years, 368 permits have been granted for expansion or construction of public and private water-related recreational facilities such as marinas, boat yards, dry docks, or boat ramps. This total does not include single family residential. Jim Stoutamire, DEP to Senate Community Affairs Committee staff, August 18, 2004. Over the past eleven years, the Corps reports it has granted an annual average of 450 permits for commercial, private, or public-owned water-related recreational facilities. Information provided by the Jacksonville, FL regional office of the Corps to Senate Community Affairs Committee staff on August 23, 2004.
[6] The ten counties with approved plans are Brevard, Citrus, Collier, Miami-Dade, Duval, Lee, Indian River, Martin, Sarasota, St. Lucie, and Volusia Counties. The two major components of the plans are: 1) identifying the need for creating new or revising existing manatee protection speed zones; and 2) a boat-siting facilities plan to address the expansion of existing marina and the development of new marinas or other multi-slip boat facilities.
[7] DEP staff report that under the Operating Agreements between the DEP and water management districts, either the department or the WMD should be responsible for a single and complete project. However, within the South Florida Water Management District, it is common for developers to "divide" the review of waterfront developments by first getting a SFWMD "no notice" GP to authorize the upland component of the project (a very easy authorization to obtain), then later apply to the Department to review a docking facility addition to the site. If the developer had divulged the entire plan of development from the beginning, they would be dealing with one agency—in most cases the WMD. However, splitting the project forces the second reviewing agency (typically the department) to evaluate the entire site to ensure the storm water system is adequate for the proposed future phases. The SFWMD does not want to review the marina under these cases, citing that they had no prior involvement with the site, given the nature of the "no notice" GP—which does not require notice to the WMD. DEP comments to draft LCIR report, December 30, 2005.
[8] See Rule 18-21.0051, F.A.C. The Florida Board of Trustees does not issue "permits", rather they are responsible for authorizing activities on sovereignty submerged lands, under their public trust responsibilities as prescribed in the Florida Constitution and in Florida Statutes Chapters 253 and 258.
[9] Section 380.06, Florida Statutes, governs the FRI program and establishes the basic process for DRI review.
[10] Section 380.06(24)(k), Florida Statutes, provides that, any waterport or marina development is exempt from the DRI process if the relevant county or municipality has adopted a boating facility siting plan or policy which includes applicable criteria, considering such factors as natural resources, manatee protection needs and recreation and economic demands as generally outlined in the Bureau of Protected Species Management Boat Facility Siting Guide, dated August 2000, into the coastal management or land use element of its comprehensive plan. The adoption of boating facility siting plans or policies into the comprehensive plan is exempt from the provisions of s. 163.3187(1). Any waterport or marina development within the municipalities or counties with boating facility siting plans or policies that meet the above criteria, adopted prior to April 1, 2002, are exempt from the DRI process, when their boating facility siting plan or policy is adopted as part of the relevant local government's comprehensive plan.
[11] Information provided by Tracy Suber, Special Projects Coordinator, Division of Community Planning, Department of Community Affairs, December 30, 2005.
[12] Florida Department of Community Affairs, Preparing a Boating Facility Siting Plan, Best Management Practices for Marina Siting: A Guidebook to Assist Local Governments in Qualifying for the DRI Exemption for Marinas, March 2003. See http://www.dca.state.fl.us/fdcp/dcp/marinasiting/MarinaGuide.pdf
[13] Section 10, Chapter 2005-157, L.O.F., (HB 955).
[14] DEP comments on draft LCIR report, December 30, 2005.
[15] Sections 2 and 3, Chapter 2005, L.O.F., (HB 759).
[16] The legislation directed DEP to analyze and propose the development of an expanded state programmatic general permit program (SPGP) in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act,

Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded SPGP, the plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the WMDs or their designees.

[17] Florida Department of Environmental Protection, Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida), September 30, 2005

[18] Id., pp. 6-7.

[19] Representatives of government regulatory agencies reported that inadequate staff and financial resources are major obstacles to improving the quality and timeliness of permit reviews. It was also noted that timeclocks might improve the speed of an application review, but at the expense of comprehensiveness, unless resources are made available concomitant with the increased workload. Additionally, there are some anecdotal suggestions that staff, in order to perhaps allow more time for a thorough review of an application, are returning permit applications prematurely using minor technical deficiencies as grounds for their return.

[20] Working Waterfronts, pp. 3-6.

[21] Pat Rose, Save the Manatee Club, January 4, 2006 and Laura Combs, January 3, 2006. DEP comments regarding the LCIR draft report, December 30, 2005. DEP staff note possible confusion in comparison of research among the various organizations as a result of no standard definition for the term "marinas." New marinas have been permitted and built, marinas have been converted to multi-family facilities, and marinas have expanded in size with more slips or changed slip size to accommodate larger boats, which results in fewer slips. Regardless, there has been a change in number since 1987 although DEP can not state definitively in which direction.

[22] Section 11, Chapter 2005-157, L.O.F. (HB 955).

[23] Information provided by Albert Gregory, Division of State Parks, DEP.

[24] Section 6, Chapter 2005-158, L.O.F. (HB 989).

[25] DEP report that several years ago the department and water management districts adopted a noticed general permit for the construction of public boat ramps. As such, DEP is uncertain whether the requirement to develop a new public boat ramp general permit will provide much additional benefit.

[26] Information on the FWC "Boating Infrastructure Study" provided by Major Jim Brown, Office of Boating and Waterways, and the Legislative Affairs Office, FWC.

[27] Section 11, Chapter 2005-157, L.O.F. (HB 955).

[28] Fla. Const. art X, s. 16, approved by voters in 1994, reduced the size of fishing nets in state waters to a maximum of 500 square feet, resulting in a reduced catch and income potential for commercial fishing industry. Federal regulations set catch limit quotas on certain desirable commercial fish such as grouper and amberjack for commercial fishing in federal waters. State regulations usually adopt federal quotas for state waters in order to simply enforcement.

[29] On August 14, 2004, DEP entered an Emergency Final Order, OGC No. 04-1458, which was amended August 20, 2004, authorizing the repair of structural damage wrought by Hurricane Charley. Paragraph 11 of the Order authorized the suspension of provisions of certain statutes, rules, or orders which would prevent, hinder, or delay necessary action in coping with the emergency. Section 403.813(2), F.S., also allows for the repair of waterway facilities which include those associated with recreational waterfronts, without a permit issued by DEP, although local requirements would still apply.

[30] Section 1, Chapter 2005-157, L.O.F. (HB 955), amends s. 163.3177, F.S. to require that comprehensive plans for coastal counties include regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts within the *future land use element*, and include public access to waterways within items indicated in the *recreation and open space element*. Section 2, Chapter 2005-157, L.O.F., amends s. 163.3178, F.S., of the *coastal management element* to require shoreline use components to include strategies that will be used to preserve recreational and commercial working waterfronts as defined in s. 342.07, F.S.

[31] Section 9, Chapter 2005-157, L.O.F. (HB 955), also implements, and formally authorizes, the existing "Waterfronts Florida Partnership Program", created by the Florida Coastal Management Program in 1997.

[32] Section 12, Chapter 2005-157, L.O.F. (HB 955) amends s. 328.72, F.S.

[33] Section 14, 2005-157, L.O.F. (HB 955), creating ss. 197.303 – 197.3047, F.S., authorizes county commissions to adopt tax deferral ordinances for recreational and commercial working waterfronts and establishes conditions for and limitations on such tax deferral programs.

[34] Section 311.09(1), Florida Statutes.

[35] Florida Seaport Transportation and Economic Development Council, A Five-Year Plan to Achieve the Mission of Florida's Seaports: 2004/2005 – 2008/2009, February 2005, page ii.

[36] id.,

[37] Section 163.3177(6)(g)9, Florida Statutes.

[38] Section 163.3178(2)(k), Florida Statutes.

[39] Section 163.3178(5), Florida Statutes.

[40] Canaveral Port Authority, Port Everglades, Port of Fernandina, Port of Fort Pierce, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, and Port of St. Petersburg.

[41] AGO 82-24, April 20, 1982. Opined the Tampa Port Authority is subject to the City of Tampa's building regulations, and that the city may require the port authority to obtain a building permit for the construction of a building upon Authority property within the city limits of Tampa and to submit to inspection by city building inspectors.

[42] Ports which reported a permit denial include: Port Everglades, Port of Fernandina and Port of Palm Beach. Two additional ports, Port Manatee and Port Tampa did not report a permit denial, but did report the occurrence of negotiations between port and government staff in order to resolve building permit issues.

Tom Lee
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Allan Bense
Speaker

The Florida Legislature

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M E M O R A N D U M

TO: LCIR Members

FROM: Chuck Hungerford, Senior Legislative Analyst

RE: Operating Agreements Between Other Agencies and Florida Department of Environmental Protection

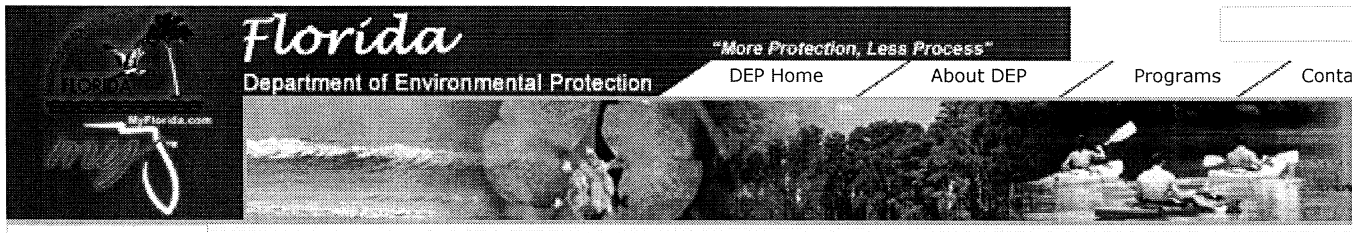
DATE: January 5, 2006

The Florida Department of Environmental Protection (DEP) has entered into operating agreements with federal, state and regional agencies, local governments, and other organizations. Some agreements establish responsibilities for environmental permitting.

The following documents identify delegations and agreements between DEP and:

1. Other State Agencies
2. Water Management Districts (WMD)
3. Local Governments and Local Pollution Control Programs
4. Federal Agencies
5. Other Entities

As an example of delegations and agreements between DEP and WMDs, certain agreements between the South Florida Water Management District and DEP are also attached.



Programs

- OGC Home
- Agency Clerk
- Air/Waste
- Enforcement
- ERC
- Executive
- Public Lands
- Water

Information

- Forms
- Rules
- Statutes
- Official Notices
- Delegations and Agreements
- Final Orders
- Enforcement Manual
- Search

Operating Agreements

The operating agreements are separated into the following categories and then below that are more sub-categories.

- Delegations and Agreements with other State Agencies
- Delegations and Agreements with Water Management Districts
- Delegations and Agreements with Local Governments & Local Pollution Control Programs
- Delegations, Approvals, and Agreements with Federal Agencies
- Delegations and Agreements with Other Entities

Help

Operating Agreements Between Other State Agencies and DEP

Title	Effective	Version
Florida Department of Environmental Protection and the Florida Department of Health. Program Operating Procedures Guidance	05/22/01	
Memorandum of Understanding between The Florida Department of Environmental Protection and The Florida Public Service Commission	09/13/01	
Interagency Agreement between The Department of Environmental Protection and The Department of Health for Onsite Sewage Treatment and Disposal Systems	09/10/01	
Interagency Agreement between The Department of Environmental Protection and The Department of Health for Biomedical Waste	09/24/96	

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Operating Agreements Between Water Management Districts and DEP

Operating Agreements Between North West Florida Water Management District and DEP

Title	Effective	Version
State Water Quality Certification Under the Clean Water Act, Dated		

February 2, 1998	02/02/98	

Operating Agreements Between South Florida Water Management District and DEP		
Title	**Effective**	**Version**
Authorization to the South Florida Water Management District to Administer and Enforce the Regulation of Mangroves	01/29/96	
State Water Quality Certification Under the Clean Water Act, Dated February 2, 1998	02/02/98	
Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S. between South Florida Water Management District and DEP	10/27/98	

Operating Agreements Between Southwest Florida Water Management District and DEP		
Title	**Effective**	**Version**
Authorization to the Southwest Florida Water Management District to Administer, Enforce and Defend Specified Parts of Chapter 17-22,	09/17/82	
Memorandum of Agreement Between the Department of Environmental Regulation and the Southwest Florida Water Management District Regarding Delegations of Permitting Authority for Aquaculture Facilities	08/23/91	
Authorization to the Southwest Florida Water Management District to Administer and Enforce the Regulation of Mangroves	01/29/96	
State Water Quality Certification Under the Clean Water Act, Dated February 2, 1998	02/02/98	
Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S. between Southwest Florida Water Management District and DEP	10/27/98	

Operating Agreements Between St. Johns River Water Management District and DEP		
Title	**Effective**	**Version**

Authorization to the St. Johns River Water Management District to Administer and Enforce the Regulation of Mangroves	01/29/96	
State Water Quality Certification Under the Clean Water Act, Dated February 2, 1998	02/02/98	
Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S. between St. Johns River Water Management District and DEP	10/27/98	

Operating Agreements Between Suwannee River Water Management District and DEP

Title	Effective	Version
Delegation of the permitting of wells under chapter 373 between the Suwannee River Water Management District and The Department of Environmental Regulation	08/17/78	
Delegation of Drinking Water Applications between the Suwannee River Water Management District and The Department of Environmental Regulation	06/18/81	
State Water Quality Certification Under the Clean Water Act, Dated February 2, 1998	02/02/98	
Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S. between Suwannee River Water Management District and DEP	10/27/98	

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Operating Agreements Between local governments and Local Pollution Control Programs

Operating Agreements Between Broward County and DEP

Title	Effective	Version
Order of Delegation and Operating Agreement Between the Florida Department of Environmental Protection and Broward County regarding the regulation of mangroves	02/13/96	
Specific Operating Agreement for Delegation of Domestic Wastewater Program Authority between the State of Florida Department of Environmental Protection and the Broward County Department of Natural Resource Protection	11/05/97	
State Water Quality Certification Under the Clean Water Act, Dated February 2, 1998	02/02/98	
Solid Waste Program Specific Operating Agreement between the State of Florida Department of Environmental Protection and Broward County.	06/05/01	

Delegation Agreement between the State of Florida Department of Environmental Protection and Broward County (Brownfields)	05/23/00	
Air Pollution Control Specific Operating Agreement between the State of Florida Department of Environmental Protection and Broward County	06/27/00	
Delegation Agreement between the State of Florida Department of Environmental Protection and Broward County. (ERP)	05/22/01	

Operating Agreements Between Dade County and DEP

Title	Effective	Version
Memorandum of Understanding between The Florida Department of Environmental Regulation and Metropolitan Dade County (Department of Environmental Resources Management)	04/27/93	
Order of Delegation and Operating Agreement between the Florida Department of Environmental Protection and Metropolitan Dade County regarding the regulation of mangroves	11/21/95	
Air Pollution Control Specific Operating Agreement between the Florida Department of Environmental Protection and Metropolitan Miami-Dade County, by and though it's Department of Environmental Resources Management	10/08/98	
Solid Waste Specific Operating Agreement between the Florida Department of Environmental Protection and Metropolitan Dade County	10/08/98	
Delegation Agreement between the State of Florida Department of Environmental Protection and Miami-Dade County	01/24/00	
Specific Operating Agreement for Delegation of Domestic Wastewater Program Authority Between The Florida Department of Environmental Protection and Miami-Dade County, by and through its Department of Environmental Resources Management	01/17/01	
Delegation Agreement between the State of Florida Department of Environmental Protection and Miami-Dade County	01/24/01	

Operating Agreements Between Hillsborough County and DEP

Title	Effective	Version
Air Pollution Control Specific Operating Agreement between the State of Florida Department of Environmental Protection and Hillsborough County	03/18/99	

Specific Operating Agreement for Delegation of Wastewater Facility Program Authority Between the Florida Department of Environmental Protection and the Environmental Protection Commission of Hillsborough County	01/24/00	

Operating Agreements Between the Town of Indian River Shores and DEP

Title	Effective	Version
Order of Delegation and Operating Agreement between the Florida Department of Environmental Protection and the Town of Indian River Shores regarding the regulation of mangroves	11/08/95	

Operating Agreements Between the City of Jacksonville and DEP

Title	Effective	Version
Air Pollution Control Specific Operating Agreement between the Sate of Florida Department of Environmental Protection and the City of Jacksonville Regulatory and Environmental Services Department Air and Water Quality Division	11/05/97	

Operating Agreements Between the Town of Jupiter Island and DEP

Title	Effective	Version
Order of Delegation and Operating Agreement between the Florida Department of Environmental Protection and the Town of Jupiter Island regarding the regulation of mangroves	01/10/96	

Operating Agreements Between Orange County and DEP

Title	Effective	Version
Air Pollution Control Specific Operating Agreement between the State of Florida Department of Environmental Protection and the Orange County Environmental Protection Department	12/30/97	

Operating Agreements Between Palm Beach County and DEP

Title	Effective	Version
Specific Operating agreement for Delegation of Domestic Wastewater Program Authority between the Florida Department of Environmental Protection and the Palm Beach County Public Health Unit	08/10/94	
Emergency Response Agreement between the Florida Department of Environmental Protection Division of Law Enforcement Bureau of		

Emergency Response and HRS Palm Beach County Public Health Unit.	11/30/94	
Agreement and Delegation for ERP Noticed General Permit for Indian Trail Water Control District	02/20/96	
Solid Waste Program Specific Operating Agreement between the State of Florida Department of Environmental Protection and Palm Beach County Health Department	08/26/96	
Air Pollution Control Specific Operating Agreement between the State of Florida Department of Environmental Protection and Palm Beach County Health Department	01/08/00	

Operating Agreements Between Pinellas County and DEP

Title	Effective	Version
Order of Delegation and Operating Agreements between the State of Florida Department of Environmental Protection and Pinellas County regarding the regulation of mangroves	02/27/96	
Solid Waste Program financial Assurance Agreement between the State of Florida Department of Environmental Protection and Pinellas County	03/02/98	
Air Pollution Control Specific Operating Agreements between the Florida Department of Environmental Protection and Pinellas County Board of County Commissioners	03/30/00	

Operating Agreements Between The Reedy Creek Improvement District and DEP

Title	Effective	Version
Local Program Agreement Between the State of Florida Department of Environmental Protection and the Reedy Creek Improvement District	08/28/96	

Operating Agreements Between the City of Sanibel and DEP

Title	Effective	Version
Order of Delegation and Operating Agreement Between the State of Florida Department of Environmental Protection and the City of Sanibel regarding the regulation of mangroves	11/21/95	

Operating Agreements Between Sarasota County and DEP

Title	Effective	Version
Air Pollution Control Specific Operating Agreement Between the State of Florida Department of Environmental Protection and the Sarasota County Natural Resources Department, Pollution Control Division	09/03/97	
Specific Operating Agreement Delegation of Domestic Wastewater Program Authority between the Florida Department of Environmental Protection and the Sarasota County Natural Resources Department	11/05/97	
Amendment to the Specific Operating Agreement (SOA) for Delegation of Domestic Wastewater Program Authority	03/20/01	

Operating Agreements Between The City of Tallahassee and DEP

Title	Effective	Version
Operating Agreement Concerning Stormwater Between the State of Florida Department of Environmental Protection and the City of Tallahassee	01/29/98	

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Operating Agreements Between Federal Agencies and DEP

Operating Agreements Between U.S. Environmental Protection Agency and DEP

Title	Effective	Version
Memorandum of Agreement between the State of Florida Department of Environmental Protection and the United States Environmental Protection Agency, Region 4 (Hazardous Waste Program)	08/10/01	
Final Brownfield Memorandum of Agreement between EPA Region 4 and the State of Florida	11/19/99	

Operating Agreements Between U.S. Army Corps of Engineers and DEP

Title	Effective	Version
Standard Operating Procedure Related to Corps Costal Activities between the United States Army Corps of Engineers and the State of Florida Department of Environmental Protection	06/05/98	
Operating Agreement between the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, the South Florida Water Management District, the St. Johns River Water Management District, the South west Florida Water Management District, and the Suwannee River Management District concerning Regulatory Programs for Activities in Wetlands and Other Surface Waters	11/30/98	
Delegations and Agreements between the State of Florida Department of Environmental Protection and The U.S. Army Corps of Engineers concerning the State Programmatic General Permit.	01/22/99	

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Operating Agreements Between the Other Entities and DEP

Operating Agreements Between the Florida-Caribbean Cruise Association, the International Council of Cruise Lines and DEP

Title	Effective	Version
Memorandum of Understanding between the DEP and the Florida-Caribbean Cruise Association and the International Council of Cruise Lines.	12/06/01	

Operating Agreements Between The Florida Ports Council and DEP

Title	Effective	Version
Memorandum of Agreement between the Florida Ports Council (non-profit Florida Corporation) and the Florida Department of Environmental Protection concerning the Establishment of a supplemental permitting process.	02/06/97	

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Last updated: October 27, 2005

Marjory Stoneman Douglas Building - 3900 Commonwealth Boulevard - Tallahassee, Florida 32399-3000,
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OPERATING AGREEMENT CONCERNING
REGULATION UNDER PART IV, CHAPTER 373, F.S.,
AND AQUACULTURE GENERAL PERMITS UNDER SECTION 403.814, F.S.,
BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
DEPARTMENT OF ENVIRONMENTAL PROTECTION

I. INTENT

The South Florida Water Management District (DISTRICT) and the State of Florida Department of Environmental Protection (DEPARTMENT) enter into this operating agreement to further streamline environmental permitting, while protecting the environment. This agreement divides responsibility between the DISTRICT and the DEPARTMENT for the exercise of their authority regarding permits, compliance, and enforcement under Part IV, Chapter 373, F.S. This agreement also divides responsibility between the DISTRICT and DEPARTMENT regarding formal wetland determinations pursuant to Subsection 373.421(2) through (5), F.S. Finally, this agreement is intended to reflect the aquaculture provisions of Section 373.046(5), F.S. and the delegation of Chapter 403, F.S., aquaculture general permitting authority under Section 403.814, F.S. It is a goal of this operating agreement that the division of responsibilities provide no reduction in levels of compliance monitoring and enforcement and, where possible, allow increased levels of compliance monitoring and enforcement.

This agreement supersedes the following agreements: Operating Agreement concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation between South Florida Water Management District and Department of Environmental Regulation, dated October 27, 1992; and First Amendment to October 27, 1992 Operating Agreement concerning Management and Storage of Surface Waters Regulation, and Wetland Resource Regulation Between South Florida Water Management District and Department of Environmental Regulation, dated January 18, 1994; and Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., Between South Florida Water Management District and Department of Environmental Protection, dated August 11, 1994.

As a future step to further increase the efficiency and effectiveness of environmental permitting, the DEPARTMENT and the DISTRICT shall jointly pursue further integration and streamlining of federal and state wetlands regulations.

II. RESPONSIBILITIES OF DISTRICT AND DEPARTMENT

A. DEPARTMENT Responsibilities

1. **Permits and Variances**

The DEPARTMENT shall review and take final action on all applications for permits and petitions for variances, under Part IV, Chapter 373, F.S., and variances or waivers under Section 120.542, F.S., for the project types listed in a. through s. below. The permit applications encompassed within the DEPARTMENT's responsibilities hereunder include those submitted for wetland resource (dredge and fill) permits and management and storage of surface water (MSSW) permits, pursuant to Subsections 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits. However, the division of responsibilities for permitting aquaculture facilities is covered exclusively in Section II.E of this agreement.

a. All solid waste management facilities that require a permit under Chapter 403, F.S. However, the DISTRICT shall review and take final action on permit applications when the solid waste management facility qualifies for a solid waste general permit and is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II.A.1. of this agreement.

b. Hazardous waste facilities that require a permit under Chapter 403,_F.S. However, the DISTRICT shall review and take final action on permit applications when the storage of hazardous waste is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this agreement.

c. Domestic wastewater treatment facilities that require a permit under Chapter 403, F.S., including effluent disposal sites. However, the DISTRICT shall review and take final action on permit applications for:

(1) That part of a facility which constitutes the application of reclaimed water to irrigate crops, golf courses, or other landscapes;

(2) That part of a facility which constitutes the application of reclaimed water to rehydrate wetlands or to provide artificial recharge to reduce or mitigate drawdown impacts due to well withdrawals; and

(3) Those facilities which address any of the requirements of Chapters 40E-4, 40E-40, and 40E-41, F.A.C., through a system or activity which is not fully contained on the domestic wastewater facility site, but which is part of a larger project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this agreement.

d. Industrial wastewater treatment facilities that require a permit under Chapters 403, F.S. However, the DISTRICT shall review and take final action on permit applications for:

(1) Those facilities that qualify for a general permit pursuant to Sections 62-660.801 (Laundromat Wastewater Disposal Systems), 62-660.802 (Pesticide Waste Degradation Systems), 62-660.803 (Car Wash Recycle Systems), 62-660.805 (Tomato Wash Water Disposal), or 62-621.300(2) (Generic Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity), F.A.C.;

(2) The excavation of a borrow pit which does not involve any on-site material grading or sorting;

(3) Those facilities in which the industrial wastewater component is merely an HVAC (heating, ventilation, and air conditioning) cooling tower discharge, or other industrial wastewater treatment facility which is merely an incidental component of a project for which the DEPARTMENT does not review and take final action on permit applications under any other paragraph in Section II. A. 1. of this agreement; and

(4) That part of a facility which constitutes the application of treated industrial wastewater to irrigate crops or landscapes.

e. All mining projects, including phosphate, heavy minerals, fuller's earth, peat, limerock, sand, gravel, and shell. However, the DISTRICT shall review and take final action on permit applications for borrow pits which have no on-site material grading or sorting facilities.

f. Power plants and electrical distribution and transmission lines and other facilities related to the production, transmission and distribution of electricity.

g. Communication cables and lines.

h. Natural gas or petroleum exploration, production, and distribution activities and facilities, product pipelines, and other facilities related to the exploration, production, and distribution of natural gas and petroleum.

i. Docking facilities, boardwalks, shore protection structures, and piers, including the adjacent docking and boating related development and navigational dredging. Adjacent docking and boating related development includes parking areas for the docking facility, dry storage facilities, boat sale and supply facilities, maintenance and repair facilities, associated seafood loading and processing facilities, restaurants, harbor master and marina administration facilities. Residential development and other commercial development is not considered docking or boating related. However, the DISTRICT shall review and take final action on permit applications for all docking facilities, boardwalks, shore protection structures, and piers, including adjacent docking and boating related development and navigational dredging, whenever such facilities are part of a larger plan of other commercial or residential development that has received or requires a permit under

Part IV of Chapter 373, F.S. For the purposes of this paragraph, where a docking, boating related, or shore protection structure project includes existing project related commercial or residential development that does not have a DISTRICT issued individual or standard general permit under Part IV of Chapter 373, F.S., because the development preceded implementation of the DISTRICT'S permitting program or was below the DISTRICT'S permitting size thresholds, the DEPARTMENT shall review and take final action on any such docking, boating related, or shore protection facility.

j. Systems proposed in whole or in part seaward of the coastal construction control line (CCCL). In Monroe, Martin and Collier Counties, where a CCCL has not been established, systems along sandy, non-vegetated shorelines proposed in whole or in part seaward of a point 50 feet above the mean high water line at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like.

k. Permitting actions as they are required for the Central Florida Beltway, pursuant to Section 338.250, F.S., the February 28, 1989 letter from Dale Twachtmann to Henry Dean, and the March 8, 1989 letter from Henry Dean to Dale Twachtmann.

l. Projects constructed, operated or maintained by the DISTRICT; however, activities of the DISTRICT permitted under Sections 403.91-403.929, F.S., or the rules adopted pursuant to those statutes, and activities of the DISTRICT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995.

m. Navigational dredging conducted by governmental entities except where associated with a larger project that is otherwise the responsibility of the DISTRICT for review and final action.

n. Seaports and adjacent seaport related development where the applicant or property owner is a port authority as defined in Subsection 315.02(2), F.S.

o. A system which serves only one single family dwelling unit, duplex, triplex, or quadruplex (hereinafter referred to as residential unit), except (i) where the residential unit is part of a larger common plan of development or sale proposed by the applicant, or (ii) where the residential unit is only an incidental part of a parcel that is otherwise used for agricultural activities for which a permit has been issued or is required under Part IV of Chapter 373, F.S.

p. The following systems in wetlands or other surface waters when they are not part of a larger plan of development: boat ramps, ski jumps, ski slalom courses, aids to navigation, mooring buoys and fields, piling supported structures which are not physically connected to uplands, aquatic plant management activities regulated under Chapter 369, F.S., fish attractors, artificial reefs, treasure salvage, and archeological research or exploration.

q. Temporary systems proposed for commercial film productions.

r. High speed rail facilities under Sections 341.321 through 341.386, F.S.

s. Magnetic levitation demonstration projects under Sections 341.401 through 341.422, F.S.

2. **Formal Determinations**

The DEPARTMENT shall review and take final action on petitions for formal determinations of the extent of wetlands and other surface waters pursuant to Section 373.421, F.S., filed by entities regarding properties on which they propose to undertake activities for which the DEPARTMENT would have permitting responsibility under this agreement.

The DEPARTMENT shall provide the DISTRICT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DEPARTMENT.

3. **Mitigation Banks**

a. The DEPARTMENT shall review and take final action on all permit applications for mitigation banks, under Part IV of Chapter 373, F.S., filed by:

(1) Entities which propose mitigation banks primarily to offset the impacts of solid waste management facilities for which the DEPARTMENT is responsible under Section II.

(2) Entities engaged in the business of mining which propose mitigation banks primarily to offset the impacts of mining projects for which the DEPARTMENT is responsible under Section II.

(3) Entities engaged in the business of power production which propose mitigation banks primarily to offset the impacts of power plants or electrical distribution or transmission lines or other facilities related to the production, transmission or distribution of electricity for which the DEPARTMENT is responsible under Section II.

(4) Entities engaged in the business of communication transmission which propose mitigation banks primarily to offset the impacts of communication cables or lines for which the DEPARTMENT is responsible under Section II.

(5) Entities engaged in the business of natural gas or petroleum exploration, production, or distribution which propose mitigation banks primarily to offset the impacts of natural gas or petroleum exploration, production or distribution activities or facilities, or product pipelines for which the DEPARTMENT is responsible under Section II.

(6) Governmental entities which propose mitigation banks primarily to offset the impacts of navigational dredging which they conduct for which the DEPARTMENT is responsible under Section II.

(7) Port authorities as defined in Subsection 315.02(2), F.S., which propose mitigation banks primarily to offset the impacts of seaports or adjacent seaport related development for which the DEPARTMENT is responsible under Section II.

(8) The DISTRICT.

b. For the purposes of Section II.A.3., "primarily to offset" shall mean that greater than 50 percent of the assigned mitigation credits from the proposed mitigation bank are proposed to offset impacts which result from the project type as specified in one of paragraphs (1) through (7) of Section II.A.3.a. However, nothing in Section II.A.3. shall prohibit a banker from using, selling, or transferring credits to offset impacts other than those identified in Section II.A.3. as specified in the mitigation bank permit.,

B. DISTRICT Responsibilities

1. The DISTRICT shall review and take final action on all applications for permits, petitions for variances, and petitions for formal determination under Part IV, Chapter 373, F.S., and variances and waivers under Section 120.542 F.S., except for those identified as the DEPARTMENT's responsibility under this operating agreement and except as provided in Section II.E. of this agreement. The permit applications encompassed within the DISTRICT's responsibility hereunder include those submitted for wetland resource permits and MSSW permits, under to Subsections 373.414(11) through (16), F.S., as well as those submitted for environmental resource permits.

2. The DISTRICT shall review and take action on projects constructed, operated or maintained by the DEPARTMENT. However, activities of the DEPARTMENT permitted under Sections 403.91-403.929, F.S., or the rules adopted pursuant to those statutes, and activities of the DEPARTMENT which did not require a permit under such statutes or rules, shall not require a permit under Part IV of Chapter 373, F.S., provided such activities are part of a project which was commenced prior to October 3, 1995.

3. The DISTRICT shall provide the DEPARTMENT with copies of formal determinations of the extent of wetlands or other surface waters issued by the DISTRICT.

C. Incorrectly Submitted Applications and Petitions; Modifications

1. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this operating agreement shall be returned to the applicant or with the applicant's concurrence, be forwarded to the correct agency. The application shall not be considered received for

purposes of Subsection 120.60(1), F.S., until it is received by the correct agency. A refund of any submitted fee shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being either returned or forwarded.

2. Notwithstanding sections II.A. and II.B. of this agreement, permit modification requests shall be processed by the agency issuing the original permit. If the permit has been modified, the agency that issued the last modification to the permit shall process the modification. However, all modifications to permits shall be processed by the DEPARTMENT for:

a. Solid waste management facilities as described in Section II.A.1.a.; and

b. Mining projects as described in Section II.A.1.e., when the modification involves the addition of new lands to the permit or the expansion of mining activities into areas not previously approved for mining.

c. Seaports and seaport related development as described in Section II.A.1.n.

D. Special Cases

By written agreement between the DISTRICT Executive Director or designee, and the DEPARTMENT, responsibilities may deviate from the responsibilities outlined in II.A., B., or C. above. Instances where this may occur include:

1. An extensive regulatory history by either the DISTRICT or the DEPARTMENT with a particular project that would make a deviation result in more efficient and effective regulation;

2. Simplification of the regulation of a project that crosses water management district boundaries;

3. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or

4. Circumstances in which a deviation would result in the application or petition being more efficiently or effectively processed.

E. Aquaculture

Notwithstanding any other provision of this agreement, the division of responsibility for permitting, compliance, and enforcement of aquaculture facilities which are not exempt from Part IV, Chapter 373, F.S., or which require aquaculture general permits under Chapter 403, F.S., shall be pursuant to Sections 373.046 and 403.814, F.S. For aquaculture activities for which the DISTRICT has Chapter 403, F.S., general

permitting authority, the DISTRICT shall also have the authority to issue letters determining that no permit is required and to perform compliance monitoring and enforcement activities.

III. DELEGATION OF AUTHORITY: MIXING ZONES, ZONES OF DISCHARGE, VARIANCES

A. The DEPARTMENT delegates authority to the DISTRICT to review and take final action on requests for zones of mixing in surface waters and zones of discharge in groundwater, in accordance with Sections 62-4.242, 62-4.244, 62-28.700, 62-522.400 and 62-522.410, F.A.C., when the requests are associated with a permit application for which the DISTRICT is responsible under the terms of this operating agreement.

B. The DEPARTMENT delegates the authority to the DISTRICT to take action on petitions for variances or waivers from state water quality standards in accordance with Sections 120.542 and 403.201, F.S., and Section 40E-4.311, F.A.C., when the petition is associated with a permit application for which the DISTRICT is responsible under the terms of this operating agreement.

IV. COMPLIANCE MONITORING AND ENFORCEMENT

A. Division of Responsibilities

Each agency shall perform compliance monitoring on all projects for which that agency, has issued a permit, consent order, final order, or for which a consent final judgment or final judgment has been entered in order to determine compliance with the conditions thereof and will enforce said conditions by taking appropriate enforcement action where necessary. However if the DEPARTMENT or the DISTRICT modifies a permit previously issued by the other agency, pursuant to this operating agreement, the agency modifying the permit shall thereafter determine compliance with the permit and enforce all provisions or conditions of that permit.

Each agency shall investigate activities regulated under Part IV of Chapter 373, F.S., which are undertaken without the required permits, and take appropriate enforcement action, when it has permitting responsibilities for those activities under this operating agreement.

B. Special Cases

1. By written agreement between the DISTRICT Executive Director or designee, and the DEPARTMENT, enforcement responsibilities for specific cases may deviate from the responsibilities outlined in Section IV.A. Instances where this may occur include:

a. The case also includes activities which may be violations of rules of the DEPARTMENT or DISTRICT that are not the subject of this agreement;

b. The case involves activities that cross water management district boundaries; or

c. Deviation would result in the case being more effectively or efficiently handled.

V. EMERGENCIES

In a declared emergency, pooling of staff resources and deviations from the terms of this agreement may be in the best interest of public service and protecting or restoring property and environmental resources. Therefore, notwithstanding the divisions of responsibilities specified in this agreement, where the Governor has issued an Executive Order which declares an emergency and the DEPARTMENT and the DISTRICT has issued emergency orders to implement the Executive Order, either party to this agreement can review and take agency action on any activities regulated under Part IV of Chapter 373, F.S., that are authorized by an emergency order during the duration of the emergency orders of the DEPARTMENT and the DISTRICT.

VI. INTERAGENCY COMMITTEE

In order to seek consistency in the environmental resource permit (ERP) program and to facilitate the implementation of the DEPARTMENT's responsibilities under Subsection 373.026(7), F.S., and Section 62-340.100, F.A.C., the DEPARTMENT and DISTRICT agree to form and participate in an ERP Committee (Committee). The Committee shall meet at least twice a year, but may meet more frequently as issues arise that require interagency coordination. The Committee shall provide a forum for the DEPARTMENT and water management districts to coordinate and communicate regarding the following:

a. Joint training efforts to maximize the use of training resources and ensure that adequate training is provided.

b. Promotion of consistent interpretation and implementation of ERP rules.

c. Proposed amendments to ERP rules.

d. Development of consistent ERP compliance and enforcement.

e. Future revisions to the DEPARTMENT and DISTRICT operating agreements regarding the ERP program.

f. Development of a statewide ERP data set and a computer data exchange methodology.

g. Such other activities which the Committee deems necessary or desirable to achieve and maintain the goals of this operating agreement.

VII. EFFECTIVE DATE

A. This operating agreement shall take effect upon execution by both parties and adoption of rule amendments which incorporate this operating agreement by reference.

B. Applications, petitions, and enforcement cases, under Part IV of Chapter 373, F.S., which are pending on the effective date of this agreement shall continue to be processed by the agency to which application or petition was made or which initiated the enforcement case, except when the DISTRICT and the DEPARTMENT agree, and in the case of an aquaculture activity the applicant also agrees, that an application, petition or enforcement case should be transferred in order to provide for more efficient processing and enforcement. Applications and petitions received after the effective date of this operating agreement will be processed as described in Section II of this operating agreement.

AGREED TO this 27th day of October, 1998.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD

FRANK WILLIAMSON, JR
CHAIRMAN, GOVERNING BOARD
Post Office Box 24680
West Palm Beach, Florida 33416-4680

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

VIRGINIA B. WETHERELL
SECRETARY
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Legal Form Approved

Legal Form Approved _____

Tom Lee
President

Allan Bense
Speaker

The Florida Legislature

LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

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Pinellas County

MEMORANDUM

TO: LCIR Members

FROM: Chuck Hungerford, Senior Legislative Analyst

RE: Stakeholders' Comments and Responses to LCIR Draft Report and Related Materials.

DATE: January 5, 2006

Staff consulted with representatives of federal, state, regional, and local government agencies, the marine construction industry and environmental groups during the course of the project regarding their expertise and knowledge of environmental permitting and related issues. They were also invited to review and comment on prior versions of the draft report: *Access to Florida Waters: Marina and Dock Permitting, Public Boat Ramps, and Port Expansion.*

Where possible, stakeholder comments and suggestions were incorporated into the current draft document or endnotes.

In one instance, representatives of DEP and a WMD were asked to respond comments from a marine consulting organization. Their responses are also attached.

HUNGERFORD.CHUCK

From: Steven Webster [execdir@fmca.us]
Sent: Wednesday, December 07, 2005 3:30 PM
To: HUNGERFORD.CHUCK
Cc: Doug Speeler; Peggy Mathews
Subject: Re: Marina and Dock Permitting

Chuck,

I know you're in special session this week, so it's an email, not a phone call!

Doug Speeler and I are working to put together the info and issues you need to move forward on marina and dock permitting reform.

Please let me know how we can be of help in any way.

Some of the key issues:

1) Identifying and resolving agency "Requests for Additional Information." A draft bill given to Senator Jones addresses this.
2) Identifying and minimizing conflicts in agency rule and law interpretation. A draft bill from Senator Bennett and Rep. Williams targets this, but is, I think, a step in the right direction on along path.
3) Ensuring that agencies and commissions correctly implement legislative intent. We're in a situation right now where FWC (Fish & Wildlife Commission) staff apparently believe that changes in the Manatee Sanctuary Act do not apply to them!
4)Removing, as much as possible, the "guesswork" out of permit applications, especially regarding the fulfillment of public interest.
5) As much as possible, removing Federal intervention. The Army Corps, in particular, is able to trump any improvements made here in Florida.

This is an idle thought, but is is possible to agree that, if the Corps delegates authority, the State of Florida agrees to accept legal responsibility? Such a move not only removes the Corps from the process, but it also safeguards them from the inevitable lawsuits.
Moreover, since Florida is sure to be named as a co-respondent in any suit, it's not as though assuming the Corps' defense would raise litigation costs... As noted, an idle thought. But a very key issue!

6) We're also very embroiled with DEP regarding its standards for dock construction, primarily in Aquatic Preserves, but other areas as well. We're in the process of asking DEP to workshop its Aquatic Preserve standards. Our lobbyist, Peggy Mathews, is assembling a list of specific issues with DEP rules. I will ask her to bring you a copy as soon as she's finished.

7) We're also advancing legislation to require proof of applicable Federal workers' comp coverage for duties performed over navigable waters. Florida Workers' Comp ends at water's edge. A worker injured over navigable waters is NOT covered by the State Act. Nonetheless, the State's provisions to provide coverage over sovereign submerged navigable waterways is a huge failure, and perhaps an excellent issue to address in this committee. (The law we're proposing would oblige state agencies, counties, and municipalities to demand proof of applicable coverage before licenses to work over navigable waters are issued or renewed, or when permits are released.)

Sincerely,

Steven

Steven Webster

HUNGERFORD.CHUCK

From: Steven Webster [execdir@fmca.us]
Sent: Tuesday, December 20, 2005 2:52 PM
To: HUNGERFORD.CHUCK
Subject: Re: draft permitting report

Chuck,

We're working on comments. Could I ask you to email me the comments you received from the Manatee Club? Unfortunately, over the past few months they have been making an increasing number of utterly false and misleading claims about manatees, about our Association, about the Legislature and the Florida Wildlife Commissioners (and more). As part of our comments to you, I would appreciate the opportunity to comment on what they're saying.

Our preliminary short-hand comments are that we would like to see the Report contain recommendations to:

1) Eliminate permitting duplication by removing the WMDs from over-the-water permitting. Candidly, I had been "iffy" about the need to do so anywhere except in the SWFWMD, but after a report I just received about what South Florida WMD is doing.... this is a hugely needed step statewide.

2) Demand accountability from agencies. One proposed bill would require agencies to cite legislative chapter and verse in their opinions -- something clearly needed, as at least one agency believes it is NOT OBLIGED to incorporate changes in State Law into its existing rules! Another bill would require that repeated Requests for Additional Information must be approved by agency management, with the approval ladder rising until ultimately the Secretary is obliged to approve additional RAIs.

More detail in a more formal comment will be forthcoming. Best wishes to you for a Merry Christmas, Seasons Greetings, and a Happy New Year.

Sincerely,

Steven

On Dec 16, 2005, at 6:25 PM, HUNGERFORD.CHUCK wrote:

> Thank you for your assistance with the LCIR project regarding dock, marina, and boat ramp permitting and port development. Attached is a copy of the draft report for your review and comment. The report will be presented at the next LCIR meeting scheduled for January 9, 2006 in Tallahassee, FL. In order for your comments to be considered for incorporation into the report, we need to receive them by December 29 or 30. I will be out of the office from December 21-28, but will be checking my e-mails. Hope you have an enjoyable and safe holiday.
>
> Again, thanks for your assistance

HUNGERFORD.CHUCK

From: Pat Rose [ecopat@comcast.net]
Sent: Friday, November 18, 2005 12:31 PM
To: HORWICH.CAROLYN; HUNGERFORD.CHUCK
Cc: ecopat@comcast.net
Subject: Information request

Carolyn and Chuck:

I hope this information response is not too late for your consideration. I have had a hectic travel schedule and must leave again in just a few minutes.

Answer to major issues question.

The major issues as I see them are:

A severe lack of planning for waterway access needs relative to balancing waterway access with aquatic ecosystem protection. The 1983 Blue Ribbon Marina Siting Final Report recommendations were very clear that this was needed but it never happened. The closest things we have are those few good boat facility siting plans within some of the Key County Manatee Protection Plans like Dade and Citrus Counties. I think you would benefit greatly from the reading the BRMS report. This issue is further detailed in a July 1990 study by Dr. Fred Bell for Florida Sea Grant titled "Economic Impact of Bluebelting Incentives on the Marina Industry in Florida. Within the study Dr. Bell accurate predicts both the fact that we would be having conflicts between private and public access issues and how many boats we would likely have registered in Florida in the year 2000 and beyond. One more document you may find of interest is the DCA March 2003 Best Management Practices for Marina Siting Guide titled Preparing a Boating Facility Siting Plan. Solution: Do the planning now even though it is too late to implement many of the solutions that could have been implemented in those coastal areas that are already nearly built out. Still planning could help with re-development in those areas. This planning is critical since except for manatee issues the comp plans really stop at the water's edge.
Another solution to some of the counties is for those counties that have manatees to prepare and implement Manatee Protection Plans that will allow manatees to be adequately protected while meeting the actual demand for waterway access.

The second major problem is that the currently very low costs of state submerged lands fees is fueling conversions of public marina to private condominiums. The skyrocketing prices of waterfront property in Florida are the primary reason this is happening. The issue is exacerbated in counties where most of the best marina locations have already been used and replacement facilities are likely to have substantial environmental problems. The Legislative and Board of Trustees solution is to go to a market based lease structure for state submerged lands. You could leave the lease fees where they are for facilities entirely open to the public but charge market rates for private leases and higher cost closer to market for facilities that want to have a hybrid of public and private slips. This would both slow the conversion of public facilities to private but also provide many more dollars that could be used to protect the public resources involved while insuring future public waterway access will not be foreclosed by private developers making windfall profits at the public's expense. Past efforts to give tax relief for public facility owners just won't work when the windfall potential exists to cash out to developers who can in some cases convey individual slips over state submerged lands for over a million dollars per slip and only pay a fraction of their profits to the state. Finally, if enough money is raised from this process it could also be a source of funding for future land acquisitions while acting to preserve public waterway access.

A third related problem is that were have virtually no reliable data on baseline boating information or future supply and demand for boating facilities. The solution could be the study that FWCC just began but it likely needs to be expanded somewhat to provide better data on future demand.

The one thing that is not a problem is that docks are not being built. We have more docking facilities being permitted and built in Florida today than in any time I can remember. The lack of good numbers on these permits is allowing the issue to be misrepresented as if manatees are the problem for a lack of public access in some areas when it is not the issue at all. The data that are available clearly dispute such a claim.

Finally, our law suit was settled years ago and, if anything, has paved the way for more docking permits to be issued as I have mentioned above. I challenge anyone to present information to the contrary.

I have much more I would like to share on this subject but can't at this time.

Please don't hesitate to contact me for clarification or copies of the cited documents should you have trouble locating any of them.

Best regards,

Pat Rose

Cell 850 570 1373

From: HORWICH.CAROLYN [mailto:HORWICH.CAROLYN@leg.state.fl.us]
Sent: Wednesday, November 02, 2005 11:19 AM
To: ecopat@comcast.net
Cc: HUNGERFORD.CHUCK
Subject: Information request
Importance: High

Mr. Rose,

As I mentioned, we are soliciting input for the Legislative Committee on Intergovernmental Relations' upcoming project on permitting issues regarding docks, marinas, boat ramps and ports. In light of our very short turnaround time, we would very much appreciate a prompt response to the inquiries below.

First, could you please provide us with any information you have regarding lawsuits or other litigation relevant to permitting and dock/marina/boat ramps/ports projects.

Second, could you please prepare a short response to the following questions:

1) What are the major issues in dock and marina permitting?
2) What is currently being done or could be done to address these issues?
3) What, if anything could the Legislature do to assist in these efforts?

When replying, please do so to "all" so my colleague, Chuck, receives the information. Thank you for your time and attention to these issues.

Carolyn Horwich
Staff Attorney
Legislative Committee on Intergovernmental Relations
600 S. Calhoun St., Suite 4
Tallahassee, FL 32399-1300
Tel.: 850.488.9627
Fax.: 850.487.6587

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

December 30, 2005

TO: Chuck Hungerford, Senior Legislative Analyst for the Legislative Committee on Intergovernmental Relations

FROM: Tracy D. Suber, Special Projects Coordinator, Division of Community Planning

CC: Janice Browning, Chief of Staff; Valerie J. Hubbard, AICP, Director, Division of Community Planning; Leonard Zeiler, Legislative Affairs Director, Melissa Joiner, Deputy Legislative Affairs Director; Bill Pable, AICP, Community Planning Policy Administrator; Jennifer Carver, AICP, Waterfronts Florida Partnership Coordinator

SUBJECT: Draft Report to Legislative Committee on Intergovernmental Relations (LCIR) regarding Access to Florida Waters: Marina & Dock Permitting, Public Boat Ramps and Port Expansion

Thank you very much for the opportunity to comment on the above-mentioned draft report regarding Access to Florida Waters. We appreciate your interest in incorporating the Department's comments into the draft report to be submitted to the LCIR for its January 9, 2006 meeting. Because of holiday schedules, we have been unable to brief Department leadership on the report and our comments. We understand that you are on a tight schedule for finalizing the report. Therefore, as requested during our phone conversation today, we would appreciate if you would accept this memo with our preliminary staff review and comments regarding the recommendations in the report that relate to the Department. We will seek further direction from Department leadership early next week.

The report makes three specific recommendations related to the Department's programs. This memo summarizes staff review of those recommendations and makes a few suggestions for changes to those recommendations.

LCIR Recommendation 1:
Encourage counties to establish a marina siting plan within the coastal management element of their local comprehensive plans and direct DCA to provide necessary technical assistance to these counties and to report annually on siting plans established to the President of the Senate, Speaker of the House of Representatives and the LCIR no later than September 30 of each year.

Staff Comment:
The LCIR report generally describes DRI requirements and thresholds related to marinas, but it does not include the specifics of how the Department determines whether a marina must go through DRI review, nor does the report explain increased thresholds for older established marinas. The report also states that counties with a marina siting plan in the coastal management element of their comprehensive plans are exempt from the DRI requirements for marinas. The report, however, should be revised to clarify that the exemption is available to any local government (not just counties) that has adopted a "boating facility

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(850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956

siting plan" in either the coastal management element or future land use element of its comprehensive plan. This is an optional exemption for local governments that choose to undertake additional planning efforts within their comprehensive plans. Currently there is not an overwhelming number of proposed and expanding marinas which falls under DRI review. Therefore, at this time, given Department's emphasis on assisting local governments with the implementation of SB 360, staff resources would need to be reprioritized to provide extraordinary technical assistance related to this issue.

DCA has already published a best management practices manual for preparing a boating facility siting plan and, upon request, does provide specific technical assistance on this issue. This technical assistance is provided with existing resources and is not a discrete program. With adequate funding, DCA could provide additional technical assistance to help communities better address this planning issue and encourage more communities to develop and adopt boating facility siting plans. To date, five local governments (Collier County, Jacksonville/Duval County, Sarasota County, City of Stuart, and City of Holly Hill) have implemented boating facility siting plans in their comprehensive plans, and Volusia County and some of the municipalities within Volusia County are in various stages of the comprehensive plan amendment process for adopting their boating facility siting plans into the comprehensive plan.

Staff Recommendation:
Delete the recommendation from the report or amend the recommendation to include funding to enable the Department to fully implement a technical assistance program. Should Department leadership determine a technical assistance program is the appropriate approach, staff could develop a program outline and estimate resources needed to carry out such a program.

LCIR Recommendation 8:
Direct DCA to report on the compliance of local governments to amend the required elements of their local comprehensive plans and incorporate these waterway preservation provisions to the President of the Senate, the Speaker of the House of Representatives and the LCIR by September 30, 2007.

Staff Comment:
There is no date specified in House Bill 955 (Ch. 2005-157, Laws of Florida) by which local governments must meet the new comprehensive planning requirements. Generally, communities are expected to incorporate such requirements at the time of their next Evaluation and Appraisal Report (EAR) and EAR-based amendments. To assist local governments to timely meet the EAR requirements, the Department notifies local governments of the EAR requirement and any changes in the comprehensive planning laws and/or rules that will need to be address in the EAR. These changes will be included in the materials provided to local governments with the notice and posted on the Department's website. At the beginning of the EAR process, the local government, in conjunction with the Department, identifies key issues to be addressed in the EAR and subsequent EAR-based amendments. During the EAR scoping meeting, Department staff can ensure that local governments are aware of these new requirements and encourage them to evaluate the issue in their community. In addition, the Department does not currently have a mechanism to track comprehensive plan amendments related to these new requirements, and a report on the number of local governments which have complied is not readily available.

The Department's current emphasis is in providing technical assistance to local governments on the financial feasibility requirements and other major components of SB 360. Further, the preservation of recreational and commercial working waterfronts is ultimately a local government decision, focusing on land use planning and balancing multiple economic opportunities. This is a difficult issue for local governments, and it could ultimately come into conflict with the financial feasibility requirements of SB360, depending on the strategies and incentives chosen at the local level. In order to provide extraordinary technical assistance related to this issue, staff resources would need to be reprioritized.

With adequate funding, DCA could provide additional technical assistance to help communities better address the requirements of HB 955. Such technical assistance could include development of specific recommendations for comprehensive plan data and analysis and suggested goals, objectives and policies to encourage preservation of recreational and commercial working waterfronts and regional workshops.

Staff Recommendation:
Delete the recommendation from the report or amend the recommendation to include funding to enable the Department to fully implement such a technical assistance program. Should Department leadership determine a technical assistance program is the appropriate approach, staff could develop a program outline and estimate resources needed to carry out such a program.

LCIR Recommendation 9:
Direct DCA, in consultation with DEP, to evaluate the impact of the Waterfronts Florida Program and its predecessor the Waterfronts Florida Partnership Program to assist waterfront communities in their efforts to revitalize waterfront areas. The evaluation shall include assessment of the extent to which the program's priority concerns are addressed. DCA shall report findings to include any recommendations for program modifications to the President of the Senate, the Speaker of the House of Representatives and LCIR by September 30, 2007.

Staff Comment:
Staff concurs with the evaluation suggestion. In fact, the Department's current funding from the Florida Coastal Management Program/DEP (federal NOAA funds) requires the Department to develop a program assessment to identify future directions for the program. The program assessment will evaluate the degree to which the graduate Waterfronts Florida Partnership Communities have succeeded in implementation of the waterfront plans, examine the broader environmental, economic, and cultural coastal management issues affecting the area or region surrounding Waterfronts Florida Partnership Communities and identify potential roles and partnerships for the communities that would benefit the quality of the community and its environs. The program assessment will identify future work and directions for the Waterfronts Florida Partnership Program and the graduate communities to reflect current conditions and needs for Florida's waterfront communities, focusing on future phases of action for graduate communities to promote continued efforts toward implementation of their vision plans. The assessment will be completed by August 31, 2006.

The results of the program assessment will be widely distributed, and the Department welcomes opportunities to collaborate with other agencies and organizations to further achieve the objectives of the program.

Staff Recommendation:
Delete the recommendation from the report or amend the recommendation to recognize the Department's pending program assessment.

HUNGERFORD.CHUCK

From: pmr [ecopat@comcast.net]
Sent: Wednesday, January 04, 2006 11:41 AM
To: Laura Combs; HUNGERFORD.CHUCK
Cc: Eric DRAPER; pthompson100@earthlink.net; pthompson@savethemanatee.org; 'Judith Vallee'; sandysmc@cfl.rr.com
Subject: RE: Comments on draft water access report

Chuck:

While I certainly concur with Laura's comments I would like to go a step further in emphasizing two points.

Because there are no reliable baseline/trend numbers regarding marina and other boating facilities in Florida it is both risky and likely misleading to assume that the "Working Waterfront" study is a reliable source of information. In fact is it much more likely, due to the methodology used that it is not correct. This is not to say that the Senate committee in anyway tried to mislead anyone with their findings, but rather that there is grossly insufficient information available to draw such conclusions as those that were cited regarding boat facility numbers since 1987. It is important to note that there are no uniform methods either established or used to track such past trends or future assessments. Having had considerable personal experience regarding monitoring permitting trends since 1987 I have every reason to doubt the validity of the findings due to the lack of reliable data from which to draw valid conclusions. Again, I am not questioning those who did the report but the data upon which it was based. Emphasis needs instead to be given to making sure that the new studies being conducted by the FWCC are accomplished and standardized methods developed for future tracking and prediction of demand. Once such reliable numbers are available then it will be time for the legislature to act. Acting on grossly incomplete or down right wrong information won't do anyone any good.

Secondly, I believe your report should include economic numbers regarding the value of Florida's submerged resources and contrast the economic need to protect these resources, as much of the boating industry's economic contributions are dependant upon a healthy aquatic ecosystem to sustain such activities by the public. Also I would like to see a foot note or other reference to the fact that most applications for marina and other multifamily boat facilities are for facilities over public submerged lands. This seems to get lost in your report.

Also related to this topic I would like to draw your attention to what I believe is an unintended but critical omission of the topic of cumulative impacts assessment. Any assessment of Boat Facility Permitting should emphasize the need to understand both the individual and cumulative impacts of continued growth and development of our coastal resources related to boating activities. Recommendations for future boat facility planning must include the acquisition and analysis of cumulative impacts data before it can be meaningful in accomplishing the hard goal of balancing future boating access growth with the protection of aquatic resources.

Finally, I want to thank you for the opportunity to comment and hope the legislature will take your recommendations to heart.

-----Original Message-----
From: Laura Combs [mailto:lrcombs@earthlink.net]
Sent: Tuesday, January 03, 2006 4:54 PM
To: 'HUNGERFORD.CHUCK'
Cc: ecopat@comcast.net; pthompson100@earthlink.net; pthompson@savethemanatee.org; 'Judith Vallee'; sandysmc@cfl.rr.com
Subject: Comments on draft water access report

Hi Chuck. Thank you again for the opportunity to comment on this. These are my comments, and Pat may

follow up with additional ones.

The report covered a lot of material very well. There are a couple of things, however, that I would suggest adding.

First, I think that folks need to recognize that natural resources are not always protected the way they need to be because for whatever reason the permit apps submitted to the FDEP and the WMDs do not always get forwarded to the FWCC. It takes a concerned citizen to notify the FWCC in some cases. This just happened here in Lee County regarding a very significant project in Cape Coral about which I notified the FWCC and they got involved very late in the game. Their letter will be forwarded in an email that follows.

Second, the draft report states that the marine contractors and the marine industry acknowledge that about 1/3 of projects are built without permits. This has been a longstanding problem and it is important for resource protection and waterway management that the state and federal agencies enforce against projects that are built without permits. Any assistance in providing additional enforcement personnel and perhaps assessing if enforcement laws are adequate is important and appreciated. I will forward a Naples News article reporting on this problem.

Third, a common theme is that there are not many/any water access facilities being developed, particularly in SE Florida. This is simply unsupported. Take a look at the information below from the January 3, 2006 and December 27, 2005 Army Corps Public Notice websites and you will see that there are plenty of development plans. Just this week alone there are applications for marinas and boat ramps that amount to at least 1149 new slips, most of which are in SE Florida. I also have concerns about the accuracy of Paragraph 2b on page 7. It states: "Since 1987, there has been no change in the number of marinas in Florida, a decline in dry storage units and a small increase in marina slips and boat ramps and ramp lanes." If one were to review marina inventories or approved permits, I am certain that this statement would be shown to be incorrect.

Thank you again for your consideration of these comments. Please call me with any questions 239-425-1541. Corps notices follow.

Laura

Corps Public Notices January 3, 2006: 1149 new slips and boat ramps proposed

Broward (remove 4 finger piers and create 247 new dry): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-1990-654.pdf

Port Everglades (extend berth): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-9931.pdf

Broward (reconfigure marina): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-4394.pdf

Broward (15 new slips); http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-3897.pdf

Charlotte (42 slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-5293.pdf

Hillsborough (90 slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-2879.pdf

Lee (reconfig Bokeelia marina and add 4 slips and barge dock) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2004-2206.pdf

Lee (add 6 slips Cayo Costa park) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-7694.pdf

Martin (100 new slips, boat ramp, dredging): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2004-10559.pdf

Martin (a 3 marina expansion combo wet and dry and dredging. 155 new slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2003-8489.pdf

Miami (44 slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-2452.pdf

Miami (a 225 slip mooring field) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2003-8907.pdf

Palm Beach (2 new boat ramps and parking) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-8610.pdf

Palm Beach (98 slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2004-10656.pdf

Palm Beach (28 slips): http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-461.pdf

Palm Beach (35 new slips) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2005-5487.pdf

Palm Beach (channel dredge) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2003-7477.pdf

Palm Beach (59 slips) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2003-7477.pdf

Palm Beach (renovate existing marina) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2004-12023.pdf

Palm Beach (build dock and mooring over Johnsons seagrass) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2002-6953.pdf

St. Lucie (marina reconfiguration) http://www.saj.usace.army.mil/permit/public_notices/January%202006/SAJ-2001-6315.pdf

Corps Public Notices December 27, 2005: 291 new slips and a boat ramp with 72 parking spaces proposed

Broward (reconfigure wet, 175 new dry) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAj-2004-12268.pdf

Charlotte (28 wet) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAJ-2005-1449.pdf

Charlotte (25 wet) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAJ-2003-297.pdf

Collier (20 wet) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAJ-2005-67.pdf

Miami (43 wet) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAj-2005-2621.pdf

Palm Beach (boat ramp with 72 trailer parking spaces) http://www.saj.usace.army.mil/permit/public_notices/December%202005/SAJ-2005-8617.pdf

Laura Combs
Southwest Florida Regional Coordinator
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Donate or Adopt-A-Manatee and join Save the Manatee Club:
http://www.savethemanatee.org/adoptpag.htm

Woods Consulting

Environmental Permitting Marine Engineering Hydrogeology Land Planning

1714 County Road 1, Suite 22
Dunedin, FL 34698

December 19, 2005

To: Chuck Hungerford (via email) and US Mail
Senator Jim King (via email)
Senator Dennis Jones (via email)
Steven Webster (via email)
Doug Speeler (via email)

Re: Comments on "Access to Florida Waters: Marina and Dock Permitting, Boat Ramps and Port Expansions, Draft Report (Revised 12-16-05)"

Gentlemen:

I appreciate the opportunity to provide comments on the subject report and also ask that my firm, Woods Consulting, be copied on future reports and correspondence pertaining to this report.

Before providing point by point comments I would like to address the following issue:

Comments on Having a Single State Agency Permit Water-Related Structures

Due to the WMDs now performing ERP permitting, approximately 85% of our projects (currently 140 active projects) are being reviewed by the WMDs, not the DEP. Four and one half years ago, I would estimate 95% of the permitting was performed by the DEP. This is true at this time primarily due to the many condominium projects being developed on the water. There is and has been a lot of discussion as to which agency is doing the best job and should one be eliminated (and if so, which one). I would note that I favor elimination of one agency only so that the process is more predictable and we can develop the in-depth understanding of the agency required to successfully permit Environmental Resource Permits (ERP). However, how does one make the decision?

I believe there is an existing arm of our state government, the Office of Programs Policies Analysis and Government Accountability (OPPAGA) that performs audits/investigations of other agencies to see how effective they are in the performance of their duties. Why not request OPPAGA to evaluate the permitting efficiency of the DEP and the WMDs and then make a decision as to which agency is doing the best job, i.e., which agency is best meeting their objectives and are doing so efficiently ? Once that is known, eliminate the other under-performing agency and then provide adequate funding to the remaining agency to do their job.

LCIR Recommendation 1: (c.2005 Legislation

- Passing a bill that one could obtain expedited permitting if 10% of slips are available to the general public will not work. For one, no matter how much the DEP or WMDs expedite the permitting, having their permit without the Corps approval is worthless. The Corps sets the time frame for permitting, not the WMDs and the DEP.

- Secondly, in our experience, all efforts to expedite permitting such as the "One Stop" approach do not work. I do not think the DEP or the WMDs will follow through on commitments to expedite permitting. This is not necessarily their fault; there are just two many factors involved. My company could not advise a client to take the risk of trying to expedite permitting in exchange for providing 10% of the slips to the public.

Office: (727) 786-5747 Fax: (727) 786-7479 Email:billwoods@woodsconsulting.org

LCIR Recommendation 2

Several thoughts:

- First, either permitting responsibility has to be given to one agency or another. Coordinated permitting by multiple agencies has never worked, and in my opinion, never will.

- Mention is made of a need to revise the regulation that applies to "default" issuance of permits that are not processed within the state's generic 90-day permitting time clock. I am not aware of a single instance where an ERP has been issued under the default rule. Our firm routinely provides the DEP or the WMDs extensions for their time to permit which is, in effect, a waiver of the 90 day time clock. I would note we often ask the same consideration from the two agencies, i.e., allow us a time extension when required to respond to a request for additional information. I believe the agencies have so much discretion that if their back was to the wall as regards the 90 day clock, they would simply deny the permit. Note I am not aware of this happening, it is just my gut feeling.

- *Expanding the existing SPGP program to allow its use by the WMDs is, in my opinion, the one step that could be taken that would have an immediate positive impact.* The best way to demonstrate this is my example. Two years ago we had two upland parcels directly across the street from one another in the City of Clearwater. The developer proposed identical building (6 townhomes for each site) and identical designs of a 6 slip multi-use mooring facility. As SWFWMD was responsible for permitting the uplands for one of the properties (permit a stormwater management system) and not the other, SWFWMD took permitting jurisdiction for one and the DEP for the other. Both docking facilities met the requirements for an exemption as they were less than 500 square feet in size and they also qualified for Consent of Use for use of state lands.

  Both the DEP and SWFWMD issued regulatory exemptions within 5 months from the date of submittal. However, in the case of the DEP, they issued the regulatory approval, the Consent of Use and the Corps approval under the SPGP program, all at the same time, all accomplished within 5 months. While SWFWMD issued the regulatory approval, as they did not have SPGP delegation, it took 14 months from the initial date of submittal to obtain the Corps permit. 5 months to permit one identical water facility, 14 months for the other----- all because one agency had the delegation for SPGP and the other did not.

LCIR Recommendation 3

I strongly support the expansion of the SPGP program. It works! It takes workload off the Corps, who are underfunded and understaffed, and it definitely streamlines the permitting process. Expansion of the SPGP, and allowing the WMDs to have this delegation, will assist greatly in streamlining the permitting process.

3. Conversion of Commercial and Recreational Waterfront Facilities to Private Facilities

The report addresses several avenues to assist cities in trying to keep working Waterfronts in existence and keep them from being sold to developers. The bottomline is ,"What is the highest and best use of the waterfront property"? The answer is almost always to sell out to developers for the construction of townhomes or condominiums. Eliminating property taxes and other such proposed solutions are of too little value to the waterfront owner to sway them to not sell out to private developers. The prices offered are simply too high compared to the monies generated by maintaining the waterfront operation.

One point that seems to be lost is that the owners of townhomes and condominiums are also part of the public. They are, however, usually the portion of the public having the highest annual income.

Economics is driving this issue and until people are unwilling to pay the high prices for condos and townhomes on the water, I see no way for the state, the cities, or anyone else to turn this situation around. One solution is for counties, municipalities and cites to purchase the waterfronts rather than private developers and maintain the facilities for the public's use. However, I do not see this happening.

I might add we need to be careful how we address this issue as we are possibly treading on property rights issues.

Comments on Requests for Additional Information (RAI) Issued by DEP and WMDs

Frank Matthew's proposed bill can go a long way in addressing the issues pertaining to multiple RAIs being issued by the reviewing agencies. *However, there are several remedies that could be put in place by the management of WMDs and the DEP now, without the passing of bills.* The management of the two regulatory agencies need to review the RAIs issued to eliminate 1) irrelevant questions and 2)"voodoo" questions. Addressing irrelevant questions, we were recently asked by an agency reviewing an exemption request to repair and rebuild a dock, "What do we plan to do with the demolition material resulting from the tear down of the dock?" I called the manager and the reviewer and asked them did they expect us to answer by stating we planned to stack the demolition debris in the middle of a navigable channel? Of course not. Is this question relevant? No. It is a "make work" question which requires time and monies to respond to.

Addressing "voodoo" questions. This term was coined by a senior manager in SWFWMD. A voodoo question is defined as a question that cannot be answered if the regulatory reviewer and his manager and the consultant permitting specialist and his/her manager put there collective heads together. If a question is issued that can only be answered by a BS answer, why ask it! There are plenty of relevant and answerable questions that can be asked.

I must recognize the efforts by Clark Hull of SWFWMD to address this issue. When we receive such questions, we call Clark and he not only responds to the question as to whether or not it is a voodoo question but he advises his reviewers in the office asking the question, as well as their managers, and also advises other SWFWMD offices to eliminate the question. That is the type of management oversight we need from all of the regulatory agencies! And yes, Clark coined the phrase "voodoo "questions.

Once more I appreciate the opportunity to provide the above comments and look forward to seeing the results of your efforts.

My regards,

Bill Woods
Woods Consulting

P:\Miscellaneous\SWFWMD and DEP\Comments on 12-16-05 LCIR Report.wpd

HUNGERFORD.CHUCK

From: Stoutamire, Jim [Jim.Stoutamire@dep.state.fl.us]
Sent: Friday, December 30, 2005 1:14 PM
To: HUNGERFORD.CHUCK; clark.hull@swfwmd.state.fl.us
Cc: Mansfield, Geofrey; Cantrell, Richard
Subject: RE: Woods Consulting Comments on LCIR Draft Report Dated 12-16-05
Attachments: consolidation program.pdf; Comments on 12-16-05 LCIR Report.pdf

Comments below.

From: HUNGERFORD.CHUCK [mailto:HUNGERFORD.CHUCK@leg.state.fl.us]
Sent: Friday, December 30, 2005 10:58 AM
To: Stoutamire, Jim; clark.hull@swfwmd.state.fl.us
Cc: Bill Woods
Subject: FW: Woods Consulting Comments on LCIR Draft Report Dated 12-16-05

Dear Jim and Clark,

Attached are comments from Bill Woods on the LCIR draft report on marinas docks and boat ramps. We would like your response to two issues raised in his comments:

1) LCIR Recommendation 2 and in particular the example about the 2 townhouse projects in Clearwater; one reviewed by DEP (all permits approved in 5 months) and the other by SWFWMD (all permits approved in 14 months). As part of your comments, and if appropriate, we would like any suggestions or recommendations for addressing similar issues in the future. The discussion of the 2 townhouses is misplaced, it relates to recommendation 3 (expand the SPGP) not recommendation 2 (expedited permitting for facilities with 10%+ slips open to the public-these are condo docks with no slips open to the public). Please note the SWFWMD did NOT take 14 months to issue the permit, the WMD only took 5 months as did DEP. The 14 month time period refers to the length of time prior to receipt of the COE permit and is indicative of 1) the fact that expediting state permitting had no impact on the federal time frame and 2) the efficiency gained by allowing the state program to issue the federal permits under an SPGP. As noted in the HB 759 report, copy attached, while the COE has indicated a willingness to expand the SPGP authority to projects reviewed by the WMDs the COE is also proposing to severely restrict the scope of projects covered under the SPGP such that it's unlikely that projects of this nature will be covered in SPGP IV when it becomes effective regardless of whether DEP or the WMD is the processing agency. As noted in the report there are a number of issues associated with expanding the SPGP and the ultimate decision on whether or not to allow that expansion rests with the Federal government and not the State of Florida although there are some steps the state can take to encourage expansion.

2) Comments on Requests for Additional Information (RAI) Issued by DEP and WMD regarding "irrelevant" questions and "voodoo" questions. Without specific examples tied to specific files I can not address unspecified "irrelevant or voodoo" questions other than to observe the agencies are responsible for asking those questions necessary to determine if a project meets the statutory and rule requirements and the applicants or their agents are responsible for providing accurate and complete responses to those questions. A simple response to a question regarding demolition debris, which may or may not be a valid question depending on the project, would be "it's going to the landfill". To the extent that applicants or agents feel that RAI questions are inappropriate they may discuss those questions with District staff or management, as Mr. Woods has done in the past, or exercise their legal right to decline to provide answers and direct the agency to deem the file complete for the purpose of processing the application.

We anticipate this issue coming up as a point of discussion during the January 9th LCIR meeting and would like to include your responses in the Committee Members' meeting materials. Thanks for your assistance.

Chuck

January 3, 2006

Chuck Hungerford
Senior Legislative Analyst
Legislative Committee on Intergovernmental Relations
600 S. Calhoun Street, Suite B4 Holland Bldg
Tallahassee, FL 32399-1300

Dear Mr. Hungerford,

This is in response to your request for comments to issues raised by Mr. Bill Woods in his letter to the Legislative Committee on Intergovernmental Relations, dated December 19, 2005, regarding the draft report entitled, "Access to Florida Waters: Marina and Dock Permitting, Boat Ramps and Port Expansions." Specifically, you requested a response to two of Mr. Woods' comments that are copied below:

1) *LCIR Recommendation 2 and in particular the example about the 2 townhouse projects in Clearwater; one reviewed by DEP (all permits approved in 5 months) and the other by SWFWMD (all permits approved in 14 months). As part of your comments, and if appropriate, we would like any suggestions or recommendations for addressing similar issues in the future.*

   Please note the Southwest Florida Water Management District did NOT take 14 months to issue the subject permit. Our processing time was reported to be less than 5 months, similar to the time it took the Department of Environmental Protection to process an application for a similar facility. The 14-month time period refers to the length of time required to obtain a permit from the Army Corps of Engineers. This time frame can be reduced if the State Programmatic General Permit (SPGP) is expanded to include the water management districts. The Southwest Florida Water Management District is supportive of efforts to expand the SPGP to eliminate this discrepancy.

2) *Comments on Requests for Additional Information (RAI) Issued by DEP and WMD regarding "irrelevant" questions and "voodoo" questions.*

   The question identified as "irrelevant", regarding disposal of demolition debris, is relevant if on-site disposal can have adverse effects. Subsequent discussion with Mr. Woods indicated this question was received in a letter from DEP. Accordingly, SWFWMD is unable speak directly to the question without a more detailed knowledge of the project. Regarding the reference to "voodoo" questions, improving the writing skills of all technical staff is an ongoing agency training effort. One responsibility of management staff is to help clarify these issues with both the applicant and staff when such problems are identified.

We appreciate the opportunity to comment on the issues brought to our attention by the Committee. Otherwise, we have no comments on the draft report.

Sincerely,
H. Clark Hull, Jr.
Director, Environmental Resource Permitting Program

3

DRAFT

2005

INTERGOVERNMENTAL

IMPACT REPORT

(Mandates and Measures Affecting Local Government Fiscal Capacity)

January 2006

Florida

Legislative Committee on Intergovernmental Relations

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2005 LCIR Intergovernmental Impact Report

I. INTRODUCTION

The primary purpose of this report is to comply with s. 11.70(4)(i), F.S., which requires the Legislative Committee on Intergovernmental Relations (LCIR) to analyze legislative action that "substantially increases the expenditures of or reduces the revenue or revenue-producing ability of counties or municipalities." The law requires that the LCIR send its analysis and report to the Governor and presiding officers of the Legislature before the convening of the next regular legislative session. Since 1978, the LCIR and its predecessor[1] have issued a series of annual reports identifying statutory mandates on municipalities and counties.

In order to maintain consistency in the annual review of mandates conducted by this Committee, this report follows the same basic format as used in prior years. This is done by applying a similar categorization of mandates and updating tables displaying new laws that impact local governments. As in earlier reports, laws requiring expenditures or revenue reductions of counties and municipalities in the last fiscal year, 2004-05, are the focus of the mandate section.

This report also includes a section citing those legislative actions that increase the revenue or revenue generating capacity of local governments. These actions are not considered mandates, but help offset, to some extent, the fiscal impact of new mandates. In addition, sections of the report discuss mandates on constitutional officers and other measures that may not be classified as a mandate under Florida law. Finally, this report contains a list of laws passed during the 2005 legislative sessions that decrease the required expenditures of counties or municipalities, preempt county or municipal authority, or grant additional explicit local discretionary authority to counties or municipalities.

[1] Chapter 96-311, Laws of Florida, repealed the Advisory Council on Intergovernmental Relations and created the Legislative Committee on Intergovernmental Relations.

II. DEFINING A MANDATE

It is important to understand how a "mandate" is defined for purposes of inclusion in this report, and how that definition compares and contrasts with what constitutes a mandate subject to the requirements of the Florida Constitution. This section of the report describes the constitutional provisions pertaining to mandates and the legislative process for determining provisions of law subject to the constitutional requirements. LCIR staff's definition used to identify those mandates cited in this report will also be set forth.

A. Definition of a Mandate in the Florida Constitution

In 1990, the Florida Constitution was amended to add provisions governing the passage of laws that affect the revenues and expenditures of local governments. This section of the constitution provides general guidance on the legal interpretation of a mandate. State mandates are implicitly defined in Fl. Const. art. VII,§ 18, as laws requiring counties or municipalities to spend funds or to take an action requiring the expenditure of funds, laws reducing the authority to raise revenue, or laws reducing the percentage of a state tax shared with counties and municipalities. (See Appendix 1 for the constitutional language.)

While the constitution denotes that no county or municipality shall be bound by any general law which requires them to spend funds or take actions requiring the expenditure of funds unless certain conditions are met; there are several EXCEPTIONS provided in Fl. Const. art. VII,§ 18. These exceptions, if met, provide that local governments must comply with a provision requiring expenditures. An EXCEPTION occurs when the Legislature has determined that the law fulfills an important state interest and one of the following situations is present: (1) funds to offset the costs of implementing the law have been appropriated; (2) the law was approved by a two-thirds membership vote of each house; (3) the Legislature finds that the expenditure is required to comply with a law that applies to all persons similarly situated; (4) the Legislature authorizes or has authorized a county or city to enact a funding source not available on 2/1/89; or (5) the expenditure is required to comply with a federal requirement or entitlement which contemplates action by cities or counties.

EXEMPTIONS from the requirements of the constitution, for example, include laws "adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations act, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions."[2]

Consequently, the Legislature may enact mandates as long as certain conditions are met. The constitutional language does not provide detail on identifying mandates or on how such terms as "insignificant fiscal impact" are to be determined.

[2] FL. CONST. art.VII,§18(d).

B. Legislative Process for Identifying Mandates Subject to the Provisions of the Constitution

There have been no laws enacted by the Legislature to specifically address the constitutional language of mandates.[3] However, since passage of the constitutional amendment in 1990, the Legislature has addressed the mandate issue in three specific manners. First, the presiding officers of the Legislature issued memoranda to legislative staff to guide them in identifying bills containing mandates. Secondly, bill analysis forms were modified to include a section requiring staff to address the potential fiscal impact on counties and cities as well as note if the bill meets the constitutional criteria as a mandate. Finally, rules in the House and Senate broadly address the constitutional mandate issue. Generally, these processes are established to identify whether a provision of law is a mandate, whether the mandate is exempt, or whether the bill includes an exception.

1. Legislative Memoranda

The President of the Senate and the Speaker of the House of Representatives issued a joint memorandum on March 7, 1991 to legislative members and staff addressing the implementation of constitutional language referring to mandates. On March 6, 1997, then Speaker of the House Daniel Webster issued a memorandum re-affirming and refining the process set forth in the 1991 memorandum. The purpose of these memoranda were to instruct legislative staff in analyzing bills that potentially fall under Fl. Const. art. VII, § 18, the provisions related to county and municipality mandates. The instructions provided criteria that legislative staff were instructed to use to determine if a bill contains a mandate. The criteria closely followed the constitutional definition of a mandate. These memoranda provided that any bill that met one or more of the following criteria should be identified as a mandate:

1) It requires cities or counties to spend funds or to take action requiring expenditure;
2) It reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on February 1, 1989; or
3) It reduces the percentage of a state tax shared with cities and counties as an aggregate on February 1, 1989.

The guidelines instruct that if the reviewed legislation meets a criterion specified in the constitutional mandate restriction, it is initially classified as a mandate. This is required even if later it is determined to fall under an *exemption* or *exception* to the constitutional restriction. The memoranda further defined terms such as "insignificant fiscal impact," and denoted how staffs are to determine if the law is exempted or excepted. Clarification of terms such as: "criminal laws"; "election laws"; "laws creating, modifying, or repealing noncriminal infractions"; and "similarly situated" is also provided in the guidelines.[4] (The 1991 and 1997 memoranda, often referenced as the original sources for the mandate policies and guidelines, are provided at the end of this report as Appendix 2 and Appendix 3, respectively. In addition to the guidance provided in the memoranda,

[3] In 1991 the Florida Legislature passed language for Article VII, Section 18 that was vetoed by then Governor Chiles. In his veto message, the Governor explained his action by saying the primary concern with the bill was that it placed extraordinary burdens on local governments that elect to avail themselves of the protections afforded by the constitutional provision.

[4] At this time, the extent to which legislative staff currently relies on the 1991 memorandum guidelines is unclear.

the Legislature developed a form labeled the "3-8-3" Local Mandate Analysis Procedure for use by legislative staff, which is labeled Appendix 5 of this report.)

2. Bill Staff Analysis Format

The format used by House and Senate staff for bill analyses includes a section for identifying the applicability of the mandate constitutional provisions. In the Senate Bill Analysis Format, the relevant section is labeled, **IV. Constitutional Issues**, with a specific category for identifying "Municipality/County Mandates Restrictions." The analysis often uses a standard statement when bills do not meet any of the consequences of the constitutional mandate restriction. In the House Bill Analysis Format, the relevant section is labeled, **III. Comments.** *Subsection A. Constitutional Issues* addresses the applicability of the mandates provision, the reduction of revenue raising authority and the reduction of state tax shared with counties and municipalities.

In addition to the applicability of the mandate constitutional provisions section, there is a fiscal note or economic impact statement in the bill analysis. In the Senate bill analysis, the fiscal information is presented in **Section V. Economic Impact and Fiscal Note,** the impacts on local governments is presented in the Subsection *C. "Government Sector Impact"* of the document. In the House bill analysis, the presentation of the fiscal information is contained in **Section II. Fiscal Analysis and Economic Impact Statement**; the impacts on local governments are specifically identified in *Subsection B. "Fiscal Impact on Local Governments"* with the non-recurring, recurring, and long-run effects noted separately for both revenues and expenditures, if applicable. For purposes of legislative application of Fl. Const. art. VII, §18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. On April 1, 2004, the official state population estimate according to the University of Florida Bureau of Business and Economic Research was 17,516,732.[5] Thus, for fiscal year 2004-05, a bill that would have a statewide annual fiscal impact on counties and municipalities, in the aggregate,[6] of $1.8 million or less is exempt from the conditions of the Fl. Const. art. VII § 18.

At this time, the quality and consistency of constitutional mandate analysis in legislative staff analyses has not been formally addressed. There is little doubt that substantial progress in the handling of mandate legislation was realized shortly after the 1990 passage of the mandate constitutional amendment. Leadership policy and the revisions to the bill analysis formats are evidence of the progress. The information compiled by the LCIR for the purpose of this report provides some insight into the legislative review of mandates. It appears, however, that ambiguities in the process might deserve a periodic examination by legislative staff and legislators.

3. House and Senate Rules

[5] Florida Estimates of Population 2004, Bureau of Economic and Business Research Warrington College of Business Administration, 2005, University of Florida.

[6] The use of the term "aggregate" is significant; since it clarifies that fiscal estimates will be made on the basis of all local governments grouped together. *See* Senate Comprehensive Planning, Local and Military Affairs Committee, *Interim Project Report 2000-24, Review of Legislative Staff Guidelines for Screening Bills for Mandates on Counties and Municipalities.*

The current House and Senate rules do not specifically address how a mandate is defined. However, the rules do contain general provisions regarding mandates. For example, Senate Rule 4.8 states that all "bills which are affected by Fl. Const. art. VII, § 18, shall be referred to the Committee on Community Affairs." Both the Senate and the House rules require that all bills be accompanied by a fiscal analysis. (See Appendix 4 for the 2004-2006 Senate and House Rules involving fiscal notes and mandates.)

C. LCIR Staff Definition of a Mandate

When doing their analysis, LCIR staff use a broad definition in identifying mandates. If any function is made "mandatory" for local governments by the Legislature, even if funded, of negligible cost, or exempt from the provisions of the constitution, it is considered a mandate and included in this report. The definition is essentially consistent with the definitions in the constitution and the 1991 legislative memorandum. Reporting what may seem to be insignificant fiscal impacts is useful in understanding the cumulative effects that numerous mandates potentially may have over time.

1. Other Types of Mandates

There are some measures which at first appear to be mandates until they are categorized using the constitutional provisions and legislative staff guidelines. Problems can emerge in determining whether any action that might cause a local government expenditure of time or money can be labeled a mandate under Florida law. Two categories of questionable mandates include "conditional" and "incidental" mandates. Even though generally these categories are not considered mandates under legislative staff guidelines, in some circumstances they are classified as mandates in this report.

a. Conditional Mandates:
Even considering the breadth of the implied constitutional definition of mandate, questions arise as to its applicability under certain circumstances. One example is conditional mandates which are interpreted by LCIR staff as those costs incurred by a local government only if it chooses to take certain actions. Conditional mandates, also known as "if-then" mandates, may be categorized as reporting requirements for optional services or activities not under local government control, routine but not required activities, required but not routine activities, and requirements on newly authorized activities.

A special type of conditional mandate is referred to as a "condition of aid". Under a strict definition, conditions of aid are not true mandates, and LCIR staff do not consider them to be mandates for the purposes of this report. This type of conditional mandate reflects demands induced by a "donor" government body that are voluntarily accepted by the recipient of funding for a specified purpose. These demands may add new administrative functions or set higher service standards for a local government, but they only have the force of law when the local government elects to provide the service or function.

Conditional mandates may be exempted or excepted by the constitution for a number of reasons, but first there is the question of whether they can be classified as mandates. Florida Senate and House mandates analysis guidelines do not address the treatment of these provisions, and in the absence of

implementing legislation for the constitutional restrictions, conditional mandates are inadequately examined.

b. Incidental Mandates:
Incidental mandates are not specifically mentioned in Fl. Const. art. VII, § 18. Yet, incidental mandates include legislation placing new restrictions, regulation and/or fees on private companies that contract with local government agencies. Even without being considered incidental, these mandates usually affect state and local governments, and their fiscal impact is often insignificant. Generally legislative staff agrees incidental mandates occur when the legislature passes a law that requires a municipality or county to expend additional local funds and that expenditure is incidental to the main purpose of the law.

Several of the health insurance and Health Maintenance Organization coverage bills that have passed in Florida contain good examples of incidental mandates. The mandated coverage in these bills increased costs for local governments in their health care plans, but all other employers that provide health insurance benefits have incurred the same costs. In the staff bill analyses, these health insurance mandates were exceptions to the constitutional mandate provisions because they apply to all persons similarly situated including state and local government employers.

2. Impacts of Federal Decisions

Mandates resulting from federal requirements are exempted from the provisions of Fl. Const. art. VII, § 18. However, some state-imposed mandates result from federal action. Often, Congress passes legislation with new requirements for states. States in turn pass legislation to implement the new federal requirements, and in doing so may impose mandates on local governments. Also, federal funding for certain functions, most notably education and transportation, are made contingent on states following federal guidelines.

III. REVIEW OF 2005 LEGISLATION AFFECTING COUNTIES AND/OR MUNICIPALITIES

The intergovernmental impacts embedded in legislation are often complex, numerous, and difficult to document. However, it is possible to identify and categorize session laws that impact counties and/or municipalities using five major categories or components. The first component, and perhaps the most important, is the review of legislation containing mandates that require additional local government expenditures, reduce local government revenue capacity or authority, or reduce the percentage of state taxes shared with counties or municipalities. The second component focuses on new or expanded revenue sources for counties and municipalities. The third component focuses on reductions in required expenditures for counties and municipalities. The fourth component addresses state preemptions, and the final component identifies legislation that grants explicit discretionary authority to counties and cities.

A. MANDATES ON COUNTIES AND MUNICIPALITIES

Table 1 lists those laws enacted during the 2005 Regular and Special Legislative Sessions requiring local government expenditures or resulting in revenue reductions, reductions in revenue generating authority, or reductions in the percentage of state taxes shared with local governments. LCIR staff identified these mandates after the close of session. The first three columns identify the chapter law number, bill number, and subject. Column four contains the type of local government impacted. Column five identifies the type of mandate. Column six contains the section of the chapter law containing the provision. Column seven summarizes each mandate or provision contained in the legislation.[7]

The last two columns address the analysis of each bill by legislative staff. The first of these two columns displays the fiscal impact of the legislation on local governments as noted in the bill analysis or as determined by the Fiscal Impact Conference.[8] The final column in Table 1 is entitled "Applicability of Mandate Restrictions (as stated in bill analysis)." It identifies the status determination made in the legislative committee bill analysis concerning the constitutional mandate provisions. That is, if legislative staff recognized the provision as potentially applicable to Fl. Const. art. VII, § 18, it is declared an EXEMPTION or an EXCEPTION, or identified as requiring a determination of "Important State Interest" and/or noted a needed passage of the bill by a two-thirds vote of each house to be binding.

Occasionally, bill analyses do not explicitly or conclusively address a mandate provision, or may cite it as "None" or "Not Applicable," which means that staff did not note any applicability to the

[7] A "provision" for the purposes of this report refers to an article or clause in a bill that specifies an "intergovernmental impact." A single mandate provision might be addressed in more than one section of a bill. A bill may also contain more than one provision.

[8] This conference meets weekly during the session and is composed of legislative and executive agency staff familiar with a variety of revenue and expenditure issues. The final outcome of the conference deliberations is documented in a spreadsheet from the Office of Economic and Demographic Research, entitled *Measures Affecting Revenues and Tax Administration-2005 Regular Session.*

constitutional mandate restrictions. In these cases, an EXEMPTION or EXCEPTION to Fl. Const. art. VII, § 18, may apply, but it is not documented in the Constitutional Mandate Restriction sections of all staff analyses.

1. General Mandates

During the 2005 Regular and Special Legislative Sessions, the Legislature passed 392 bills that were not vetoed by the Governor. Of these bills, LCIR staff identified 55 bills which contained a total of 75 mandate provisions impacting counties or municipalities. Not all of the bills containing mandates have an overall negative impact on local governments. In fact, some mandates accompany provisions benefiting local governments as part of a compromise, or as constructive requirements related to desired legislative actions.

LCIR staff categorizes mandates by the following types:

1) Programmatic - creates programs or sets quality standards for existing programs.

2) Procedural - tells the locality how to conduct the business of government. (Examples: record keeping, reporting and personnel.)

3) Constraint - limits the rate at which government can raise revenue, the base from which revenues can be raised, or the way in which revenues may be spent. (Examples: tax exemptions and expenditure limits.)

4) Physical - sets standards on construction, inspection, or maintenance of public facilities.

The most frequent type of mandate listed in Table 1 is procedural mandates. Chart 3 on page 14 also indicates that there were 49 bills passed in the 2005 legislative sessions which contained 65 provisions in the procedural mandate category. This type of mandate typically impacts county constitutional officers. The mandate type containing the second highest number of provisions was constraint with six provisions. Four provisions were programmatic, and none were identified as physical.

Staff identified 25 bills containing 35 mandate provisions affecting counties and municipalities, with an additional 28 bills containing 37 mandate provisions affecting only counties and three bills containing one provision each that exclusively affected municipalities as illustrated in Chart 4 on page 15.

2. Mandates on County Constitutional Officers

Some mandates are imposed on county constitutional officers, who are those officers specified in Fl. Const. art. VIII, § 1, including the Sheriff, Supervisor of Elections, Tax Collector, Property Appraiser, and Clerk of Court (County Comptroller). Mandates on these officers usually take the form of additional duties, although frequently the new duties are accompanied by authorization to levy additional fees. Mandates affecting the Supervisors of Elections are often exempted from the constitutional requirement under the election law exemption, just as those regarding the Sheriff's Office are often exempted as bills pertaining to criminal law. The following chart categorizes by

officer the 19 bills containing a total of 20 provisions from the 2005 Regular and Special Legislative Sessions which impose mandates on these officers.

CHART 1

Mandates on County Constitutional Officers						
	Clerk of Court	Supervisor of Elections	Sheriff	Property Appraiser	Tax Collector	Total
Number of Bills	7	2	3	4	3	19
Number of Provisions	8	2	3	4	3	20

Note: Bills may contain more than one provision and/or provisions may affect more than one of the constitutional officers.

3. Constraint Mandates

This section examines bills that limited the rate at which local governments can raise revenue, the base from which revenues can be raised, or the way in which revenues may be spent, as well as various tax exemptions or tax credits in the 2005 Regular Legislative Session. Six bills, each containing one mandate provisions of this type, passed. These exemptions or limitations refer to sales, ad valorem and severance taxes. The effect of such exemptions, especially as it applies to ad valorem taxes, is a potential loss of tax revenue to local governmental entities. For example, Ch. 2005-197, L.O.F., provides that there will no tax on the sale, rental, consumption, or storage of power equipment used exclusively on a farm or in a forest in the production of crops or products as produced by agricultural industries. The Fiscal Impact Conference calculated that this bill would potentially result in a "recurring" loss of revenue to local governments of $1.6 million during fiscal year 2004-05.

4. Summary of Mandates

A review of 2005 mandate provisions finds that one bill containing one provision is the only provision of the 75 total provisions identified in the legislative staff analysis or the measures affecting revenue and tax administration as having a significant fiscal impact. Chapter 2005-271 L.O.F., met the legislative threshold for significant impact yet, according to the bill analysis, was excepted from the constitutional mandate provision through a two-thirds approval of each body of the Legislature. Additionally, Ch. 2005-271, L.O.F., provided tax relief for Floridians on selected items having a purchase price of $50 or less. The law was expected to reduce the authority of counties and municipalities to raise revenues and thereby constituted a mandate but was excepted by two-thirds vote of each legislative body.

Fiscal impact was considered unknown or "indeterminate" in 13 provisions and minimal or "insignificant" (less than $1.8 million) in 8 provisions. The staff analyses for the remaining provisions either noted the law was exempted, had no fiscal impact, or the impact was not addressed in the analysis.

B. NEW OR EXPANDED REVENUE SOURCES FOR COUNTIES OR MUNICIPALITIES

Table 2, "New or Expanded Revenue Sources for Counties or Municipalities," identifies legislation that provides counties and municipalities with new or expanded revenue options. The Legislature often enacts new or expanded revenue sources to offset the costs of newly imposed mandates. In total, the Legislature enacted twelve laws, each law containing one provision included in this category. Summarized below are the categories of new or expanded revenue sources enacted during the 2005 Regular Legislative Session:

CHART 2

Revenue Source	Number of Provisions
Assessments	8
Grants/Loans	3
Sales	0
Other	1

Note: See Table 2 for more detail.

As illustrated in Chart 2 above, most of the 2005 revenue enhancements were legislation authorizing new or expanded assessments. Chapter 2005-194, L.O.F., for example, amends s. 318.18 F.S., to increase the fine from $60 to $125 for a driver failing to obey a traffic control signal. This law is expected to generate additional revenue for local governments through fines generated by these violations.

It should be noted that the 2005 General Appropriations Act (Ch. 2005-70, L.O.F.) also contains several funding measures that may impact local governments. Generally, these impacts could be positive. However, this report does not address provisions from the appropriations implementing bill.

C. LAWS THAT DECREASE EXPENDITURES FOR COUNTIES AND MUNICIPALITIES

In addition to laws authorizing enhanced revenue opportunities to counties or municipalities, the Legislature enacts laws that may reduce required expenditures of these local governments. During the 2005 Regular Legislative Session, there were seven bills containing one provision each which decreased the required expenditures of counties or municipalities (See Table 3).

The cost savings realized by these various measures are often speculative and therefore hard to quantify. For instance, Ch. 2005-200, L.O.F., passed during the 2005 Regular Legislative Session, amends s. 403.413, F.S., increasing the fine from $50 to $100 for any person who litters on public land, waterways or private property. It is expected that the legislation will reduce littering thereby reducing the spending for trash clean up activities.

D. LAWS THAT PREEMPT COUNTY OR MUNICIPAL AUTHORITY

The U. S. Advisory Commission on Intergovernmental Relations (U.S. ACIR) defined preemption as, "(A)n appropriation or seizure for oneself to the exclusion of others."[9] On the federal level, preemption involves congressional assertion of the Supremacy Clause of the U.S. Constitution. The Supremacy Clause states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[10]

Reading the Supremacy Clause into federal preemptions requires interpreting the congressional powers enumerated in the U.S. Constitution. In its report entitled, Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues, the U.S. ACIR asserted that because of the importance of this interpretation, the classic definition seldom applies to federal preemption: "Federal preemption usually displaces state or local laws that already occupy a field - laws that reflect the preferences of the citizens of states and localities as expressed through their elected legislators."[11]

As in the federal model, state preemption of local laws in Florida also happens in a manner that often displaces local laws already in existence. Based on language in the Florida Constitution, legislative preemptions are limits on home rule authority or legislative restrictions on administering or conducting a particular program or action. Briefly, home rule authority is provided by the Florida Constitution and grants counties and municipalities broad structural and functional authority, except when expressly prohibited by law.[12] Legislative enactments in 1969 and 1973, as well as several Florida Supreme Court decisions, have further clarified the extent of local government discretionary authority.[13] Except for taxing authority, Florida municipalities and counties have the discretionary authority to control local affairs without state interference. However, it is the Legislature's prerogative to decide what constitutes "local affairs," often through preempting local discretionary authority.

There are many reasons cited for preempting local government discretionary authority. Preemptions are sometimes necessary to achieve state policy objectives, increase efficiency in service delivery, ensure equity, quality, and uniformity in service delivery and avoid duplication across the state. On the other hand, state preemptions of local authority may impede innovation by restricting local control. It is often argued that local flexibility is the key to providing quality service.

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[9] Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues, U.S. Advisory Commission on Intergovernmental Relations, 5 (September 1992) [Hereinafter Federal Preemption].

[10] U.S. Const. art. VI.

[11] Federal Preemption, supra, note 10, at 5-6.

[12] See Fl. Const. art VIII, §. 1, 2 and §125.01(1), and 166.021(1), Florida Statutes.

[13] See Gallant v. Stephens, 358 So.2d 536 (Fla. 1978); Florida City of Boca Raton v. State of Florida, 595 So.2d 25 (Fla. 1992); and Chs. 69-45 and 73-290, Laws of Florida (adoption of charter and charter commission changes, respectively).

Table 4 lists 2005 Regular Session Legislation that preempts city or county discretionary authority. The table lists five bills, with six provisions preempting local authority. One provision found in Ch. 2005-171, s. 4, L.O.F., prohibits local governments from imposing or requiring information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under Ch. 553, F.S.

E. LAWS THAT GRANT EXPLICIT DISCRETIONARY AUTHORITY

As stated earlier, Florida counties and municipalities generally have the discretionary authority, with the exception of taxation authority, to control local affairs without state interference. However, local governments are limited by the statutes. The Legislature may grant explicit discretionary authority to Florida counties and municipalities. In most cases, the authority granted is new or expanded. However, particularly in regard to municipalities, the grant of explicit discretionary authority in the statutes sometimes has existed previously as home rule authority.

One example of a grant of authority legislation is Ch. 2005-135, L.O.F., which allows municipalities to purchase annuities for municipal personnel in the same manner as counties may for county personnel.

Table 5 identifies 25 bills with 32 provisions containing explicit discretionary authority granted to municipalities or counties in the 2005 Regular and Special Legislative Sessions.

IV. SUMMARY

This report fulfills the statutory requirement that the LCIR annually review actions that substantially increases the expenditures or reduces the revenue or revenue-producing ability of counties or municipalities. It also identifies legislative provisions that might offset the cost accompanying mandates or ease the ability of local governments to meet the fiscal demands resulting from new requirements. Contributing to the understanding of the intergovernmental implications of legislation, the report also identifies and describes several other legislative provisions having intergovernmental significance. Specifically, these refer to preemptions by the State of local authority and examples of legislation granting explicit local government authority.

This report does not consider the 37 bills that were passed during the 2005 Regular and Special Legislative Sessions but subsequently vetoed by the Governor. House Bill 1-B from Special Legislative Session B is also pending action from the Governor. Therefore, the Legislature enacted 55 laws containing 75 provisions placing mandates on counties and municipalities. As illustrated in Chart 3, most of the mandates identified in this report were characteristically procedural. The majority of the mandate provisions affected both counties and cities, but a large number of mandate provisions affected counties only (see Chart 4). A review of the mandate provisions finds that the largest category of mandates involved procedural mandates (65) telling localities how to conduct the business of government. One of these provisions was identified in the legislative staff analysis as having a significant fiscal impact. Located in Ch. 2005-271, L.O.F., this provision was excepted from the constitutional mandate provisions.

A total of 12 provisions provided new or expanded local government revenue sources. Bills that reduced local government expenditures totaled seven and contained seven provisions. Five bills contained six provisions preempting local discretionary authority to the state. Finally, there were 25 bills with 32 provisions in which the Legislature granted explicit discretionary authority to counties or municipalities in 2005 (see Chart 3).

CHART 3

SUMMARY OF INTERGOVERNMENTAL IMPACTS IN LEGISLATION PASSED DURING THE 2005 SESSION

Category		Number of Bills	Number of Provisions
Mandates - Table 1	*Type of Mandate*		
	Programmatic	4	4
	Procedural	49	65
	Constraint	6	6
	Physical	0	0
	Total	**55***	**75**
Increased Revenues – Table 2**			
	Total	**12**	**12**
Decreased Expenditures - Table 3**			
	Total	**7**	**7**
Preemptions - Table 4**			
	Total	**5**	**6**
Granting Authority – Table 5**			
	Total	**25**	**32**

Notes: *Bills may contain more than one category of mandate and in some cases, a provision may contain more than one type of mandate. Thus, the number of types and provisions of mandates does not necessarily equal the total number of bills with mandates.

**The provisions in Tables 2-5 illustrate impacts and not mandates; in some cases the impacts may be classified as mandates and may be captured in Table 1, as well.

CHART 4

SUMMARY OF INTERGOVERNMENTAL IMPACTS IN LEGISLATION PASSED DURING THE 2005 SESSION BY TYPE OF LOCAL GOVERNMENT IMPACTED

Category		Number of Bills	Number of Provisions
Mandates - Table 1	*Type of Local Govt. Impacted*		
	Cities	3	3
	Counties	28	37
	Counties & Cities	25	35
	Groups of Counties & Cities	0	0
	Total	**56**	**75**
Increased Revenues – Table 2	*Type of Local Govt. Impacted*		
	Cities	0	0
	Counties	6	6
	Counties & Cities	6	6
	Groups of Counties & Cities	0	0
	Consolidated Governments	0	0
	Total	**12**	**12**
Decreased Expenditures - Table 3	*Type of Local Govt. Impacted*		
	Cities	0	0
	Counties	3	3
	Counties & Cities	4	4
	Groups of Counties & Cities	0	0
	Total	**7**	**7**
Preemptions - Table 4	*Type of Local Govt. Impacted*		
	Cities	0	0
	Counties	1	1
	Counties & Cities	4	5
	Groups of Counties & Cities	0	0
	Total	**5**	**6**
Granting Authority - Table 5	*Type of Local Govt. Impacted*		
	Cities	3	3
	Counties	8	10
	Counties & Cities	11	15
	Groups of Counties & Cities	3	4
	Total	**25**	**32**

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TABLES

I. TABLE 1- MANDATES

II. TABLE 2- NEW OR EXPANDED REVENUE SOURCES

III. TABLE 3- DECREASED EXPENDITURES

IV. TABLE 4- PREEMPT DISCRETIONARY AUTHORITY

V. TABLE 5- GRANTS OF AUTHORITY

APPENDICES

Appendix 1:	**Article VII, Section 18, Florida Constitution**
Appendix 2:	**Content of Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (Legislative Leadership Memorandum, 1991)**
Appendix 3:	**Content of Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates also adopted 1991 Leadership Memorandum (Florida House of Representatives Memorandum, 1997)**
Appendix 4:	**Rules of the Florida Senate and House**
Appendix 5	**"3-8-3" Local Mandate Analysis Procedure**

APPENDIX 1

FLORIDA CONSTITUTION

ARTICLE VII, FINANCE AND TAXATION

SECTION 18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.-

(a) 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 unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; 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 either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989. The provisions of this subsection shall not apply to enhancement enacted after February 1, 1989, to state tax sources, or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives, or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.

APPENDIX 2

CONTENT OF MEMORANDUM ADDRESSING THE IMPLEMENTATION OF CONSTITUTIONAL LANGUAGE REFERRING TO MANDATES
(Circulated by House Speaker Wetherell and Senate President Margolis, March 7, 1991)

COUNTY AND MUNICIPALITY MANDATES ANALYSIS

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provisions relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

OVERVIEW:

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

GENERAL CONSIDERATIONS:

* In analyzing a bill or amendments to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.

* The mandates analysis applies only to general laws and not to special laws (local bills).

* The requirements of Article VII, Section 18 apply only to cities and counties.

CRITERIA:

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

A. **A law requiring cities or counties to spend funds or to take action requiring expenditure.**

B. **A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.**

1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases is such authority.

2. The term "authority" applies to:

a) the power to levy a tax;
b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
c) the tax rate which can be levied; and
d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

C. **A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.**

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.

EXEMPTIONS:

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991** -- This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.

2. **Criminal law** -- This applies to any bill relating to the following:

   * Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.
   * Relating to the processes of arrest and pretrial detention.
   * Relating to defense and prosecution.
   * Relating to adjudication, sentencing, and implementation of criminal sanctions.

3. **Election Laws** -- Generally, this applies to any bill relating to the required processes and procedures of holding public elections.

4. **The General Appropriations Act**

5. **Special Appropriations Acts**

6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority** -- Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.

7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

   For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of $1.4 million or less is exempt.

   Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of $5 million statewide, but would generate $4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

EXCEPTIONS:

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

A. General bills requiring cities and counties to spend funds or to take action requiring expenditure.

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

1. The Legislature Determines That It Fulfills an Important State Interest:

This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

2. Condition #1 must be met and any one of the following exceptions:

a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

b. The Legislature authorizes or has authorized a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

c. This expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are

treated similarly, even though the group may only contain governmental entities or even only local governmental entities.
The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.

If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest <u>and</u> the bill must pass by a 2/3 vote to effectively bind cities and counties.

B. <u>A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.</u>

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

C. <u>A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.</u>

The exceptions by which this criterion does not apply are:

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.

2. During a fiscal emergency; or

3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.

APPENDIX 3

CONTENT OF MEMORANDUM ADDRESSING THE IMPLEMENTATION OF CONSTITUTIONAL LANGUAGE REFERRING TO MANDATES (Circulated by House Speaker Webster, March 6, 1997)[1]

The Florida Constitution places requirements on this body concerning the passage of bills that impose mandates on counties and municipalities. (Article VII, Section 18) A set of guidelines and procedures for interpreting this constitutional provision is attached. It is my intention that the House follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18.

PROCEDURE FOR-ANALYZING BILLS FOR MANDATES

1. Staff for the committee of initial reference have responsibility to review all assigned bills for potential mandate issues in accordance with the provisions of the Constitution and the guidelines issued by the Speaker. Council staff are available for consultation during this process.

   Members and staff should raise any new mandate issues introduced to bills by amendments that are adopted throughout the process.

2. If the bill is identified as a potential mandate, the Chair makes a final decision about language to include in the bill analysis.

3. If the Chair is uncertain, the potential mandate is referred for discussion by the Council -.If the bill is heard by the committee before the Council makes a determination, the analysis will reflect that a potential mandate issue is identified. The analysis should be updated by the committee of initial reference as soon as the Council makes a determination.

4. The Chair of the Council may request that the issue also be reviewed by the staffs of the Fiscal Responsibility Council, the Rules Committee, and House Bill Drafting. Those staff, with the Council staff, would have the responsibility to develop options for the Chair's or Council's consideration.

5. Before any bill with a mandate is sent to the floor, the mandate issue will be reviewed by the Council with responsibility for calendaring the bill. The members should specifically decide whether the mandates portion of the analysis should be changed. The Council will also consider any bills raised by members as potential mandates that do not have a mandate identified in the analysis.

6. Final decision on whether a bill contains a mandate is made on the floor by the Speaker.

[1] Also adopted the County and Municipality Mandates Analysis circulated in 1991.

APPENDIX 4

While there may be several rules that have some application to the mandate constitutional requirements when legislation is filed, passed by committees, and on the floor of the respective chambers, the most pertinent to the constitutional mandate requirements are provided below:

SENATE RULES (2004-2006)

Rule 3.13 - Fiscal Notes
(1) Upon being favorably reported by a standing committee, all general bills or joint resolutions affecting revenues, expenditures, or fiscal liabilities of state or local governments shall be accompanied by a fiscal note. Fiscal notes shall reflect the estimated increase or decrease in revenues or expenditures. The estimated economic impact, which calculates the present and future fiscal implications of the bill or joint resolution, must be considered. The fiscal note shall not express opinion relative to the merits of the measure, but may identify technical or mechanical defects.

(2) Fiscal notes on those bills affecting any state retirement system shall be prepared after consultation with an actuary who is a member of the Society of Actuaries and the cooperation of appropriate state agencies for necessary data shall be solicited.

(3) Fiscal notes shall be regarded as memoranda of factual information and shall be made available to members of the Senate.

(4) If a bill or joint resolution is reported favorably by a committee without a fiscal note or economic impact statement, as defined in this Rule, a Senator may at any time raise a point of order, and the President shall order return of the bill or joint resolution to the committee. A fiscal note prepared for a Senate bill or joint resolution shall be presumed as prepared also for its House companion for the purposes of point of order.

Rule 4.8 - Reference of bills affecting appropriations, revenue, retirement or county or municipal spending
All bills authorizing or substantially affecting appropriations or tax revenue shall be reviewed by the Committee on Ways and Means or any other appropriate committee. All bills substantially affecting a state-funded or state-administered retirement system shall be reviewed by the Committee on Governmental Oversight and Productivity. All bills which are affected by the provisions of Article VII, Section 18 of the State Constitution shall be reviewed by the Committee on Community Affairs. A bill that is amended to substantially affect appropriations or tax revenue, a state retirement program, or expenditures or revenues as set forth in Article VII, Section 18 of the State Constitution shall, before being placed before the Senate for final passage, be reviewed along with all amendments by the Committee on Ways and Means or any other appropriate committee for recommendation to the Senate, which review during the last ten (10) days of a regular session shall be accomplished within twenty-four (24) hours.

HOUSE OF REPRESENTATIVES RULES (2004-2006)

Rule 7.21 - Fiscal Analysis
(a) All general bills affecting revenues, expenditures, or fiscal liability shall be accompanied by a fiscal analysis upon being reported favorably by the Fiscal Council or a standing fiscal committee.

(b) If any bill with a fiscal impact is reported favorably by the Fiscal Council or any standing fiscal committee without a fiscal analysis having been prepared, it shall be the right of any member to raise a point of order on second reading and the Speaker may order the bill recommitted to the Fiscal Council.

(c) Fiscal analyses shall state in dollars the estimated increase or decrease in revenues or expenditures and the present and future fiscal implication of the bill. A fiscal analysis shall be regarded as a memorandum of factual information and may be included within the body of the bill analysis that accompanies the bill, which statement shall be made available to members.

(d) The fiscal analysis portion of the bill analysis shall not express comment or opinion relative to the merits of the legislation proposed, but should point out technical or mechanical defects.

(e) The accuracy of a fiscal analysis shall not be a basis for a point of order under these rules. A fiscal analysis prepared for a House bill may be presumed as prepared also for its Senate companion.

APPENDIX 5

"3-8-3"
LOCAL MANDATE ANALYSIS PROCEDURE

Every general bill and amendment offered to a general bill, must be reviewed to determine if one of the three following CRITERIA are met. If "hooked" by one or more criteria, the bill must be reviewed for EXEMPTIONS which would "unhook" it. If not exempted, the mandates analysis bill must be reviewed for applicable EXCEPTIONS which would "unhook" it. See the accompanying analysis for substantive guidelines.

CRITERIA

IF:

A. General Bill requiring cities/counties to spend money or take action that requires expenditure of money

OR

B. General bill anticipated to reduce authority of cities and counties to raise total aggregate revenues over 2-1-89 levels

OR

C. General bill reducing total aggregate city/county percentage share of a state tax below 2-1-89 levels

HOOKED

THEN

Determine if any EXEMPTION applies:

IF:

1. Funding of pre-1-8-91 pension benefits
2. Criminal laws
3. Election laws
4. General Appropriations Act
5. Special Appropriations Acts
6. Re-authorization (but not expansion) of existing statutory authority
7. Insignificant fiscal impact
8. Non-criminal infractions

IF:

Still "hooked," determine if any EXCEPTION applies:

Criterion A: Applicable EXCEPTIONS

1. Legislature (not staff) formally determines an important state interest.

AND

2. any one of the following:

a. Estimated funds are appropriated to cover the mandate
b. New, post 2-1-89, simple majority funding source provided locally
c. Similarly situated persons are all required to comply
d. Federal requirement

UNHOOKED

IF

Still "hooked," under criterion A, the bill must be found to fulfill an important state interest and have a 2/3 vote of the membership of each house

Criterion B: Applicable EXCEPTIONS

There are no substantive exceptions.
The bill must have a 2/3 vote of membership of each house.

Criterion C: Applicable EXCEPTIONS

1. Post 2-1-89 enhancements to state tax sources

OR

2. Procaimed fiscal emergency

OR

3. Revenue replacement anticipated to offset reduction in percentage share of cities/counties

Handle as any other measure with majority vote on final passage.

IF:

Still "hooked," under criterion C, the bill must have a 2/3 vote of the membership of each house.

Table 1
Mandates -2005 General Session

Chapter Law	Bill #*	Subject	Type of Local Government Impacted	Type of Mandate	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)	Applicability of Art VII, s. 18, Fla. Const. (As stated in bill analysis)
2005-28	1877	Sexual Predators and Sexual Offenders	Counties (Sheriffs)	Procedural	3	Requires the sheriff's office to electronically submit and update all information provided by the sexual predator, to the Department of Law Enforcement.	None. (House Bill Analysis, 4/16/05)	Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties. (House Bill Analysis, 4/16/05)
2005-32	349	Auditor Selection Procedures	Counties	Procedural	1	Requires each local government entity to use auditor selection procedures provided prior to entering into a written contract with an auditor to conduct the annual financial audit required in s. 218.39, F.S.	**Indeterminate** but expected to be minimal. Local governments may continue to consider price in selecting auditors, which may mitigate against sharp price increases. Also, local governments which have not been using competitive selection procedures may experience lower audit costs due to greater competition among potential audit providers. Local governments which have used very simple auditor selection processes may experience higher administrative costs from using the new procedures; however, the impact is still expected to be minimal. (House Bill Analysis, 3/30/05)	None. (House Bill Analysis, 3/30/05)
			Counties	Procedural	1	Requires charter counties and non-charter counties to establish an audit committee to select an auditor prior to entering into a written contract.		
2005-33	411	Criminal Punishment	Counties and Municipalities	Procedural	1	Increases the ranking of several offenses in the offense severity ranking chart of the Criminal Punishment Code.	On February 22, 2005, the Criminal Justice Impact Conference decided that the prison bed impact of this bill on the Department of Corrections is **indeterminate** with minimal expected impact. (House Bill Analysis, 3/30/05)	The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law. (House Bill Analysis, 3/30/05)
2005-39	1283	Child Support	Counties (Clerks)	Procedural	16	Amends s. 382.015, F.S., to require the Clerk of the Court to ensure that all judicial determinations of paternity are reported to the Department of Health.	There may be additional expenditures incurred by the Clerks of Court. This has **not been determined** at this time. (House Bill Analysis, 4/20/05)	The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities. (House Bill Analysis, 4/20/05)
			Counties (Clerks and Sheriffs)	Procedural	34	Amends s. 409.259, F.S., to require clerks of the circuit court, sheriffs and others to work cooperatively to implement electronic filing of pleadings, returns of service, and other papers by October 1, 2009.		

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2005-42	550	Property Tax Exemptions / Disabled Veterans	Counties and Municipalities	Constraint	2	Amends s. 196.24, F.S., to provide that the $5,000 property tax exemption for disabled ex-service members is extended to the un-remarried surviving spouse. This exemption would be in addition to the $500 property tax exemption available to all resident widows and widowers in this state.	This bill grants a property tax exemption to the un-remarried surviving spouse of a disabled ex-service member who was otherwise entitled to the exemption. The Revenue Estimating Conference has estimated the fiscal impact of this bill legislation to be ($1.1) million. (Senate Bill Analysis, 3/7/05)	By granting a $5,000 property tax exemption to the un-remarried surviving spouse of a disabled ex-service member who is otherwise entitled to the exemption, the bill is anticipated to reduce the municipalities' and counties' property tax base, thereby reducing their revenue-raising authority. As such, this bill could fall under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. However, the bill's estimated impact on local revenue is ($1.1) million, and therefore is deemed **insignificant** and not subject to the two-thirds vote requirement. (Senate Bill Analysis, 3/7/05)
			Counties (Property Appraisers)	Procedural	2	Property Appraisers may be required to process application for the un-remarried surviving spouse of a disabled ex-service member who is otherwise entitled to the exemption.		
2005-49	885	Regional Autism Centers	Counties	Procedural	1	Provides that Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties will be serviced by the Department of Exceptional Student Education at Florida Atlantic University.	None. (House Bill Analysis, 4/19/2005)	None. (House Bill Analysis, 4/19/2005)
2005-53	288	Seaport Security Plan/OGSR/ Public Record	Counties and Municipalities	Procedural	1	Amends s. 311.13, F.S., to exempt from public records requirements records held by a seaport authority created by act of the Legislature or the records held by a county or municipal seaport department that operates a seaport.	None. (Senate Bill Analysis, 1/13/05)	None. (Senate Bill Analysis, 1/13/05)
2005-55	356	Substance Abuse Treatment	Specific Counties	Programmatic	1	Amends s. 394.499, F.S., to allow the expansion of demonstration models for children's behavioral crisis unit in Collier, Lee and Sarasota counties.	None. (Senate Bill Analysis, 2/4/05)	None. (Senate Bill Analysis, 2/4/05)
2005-72	19	Motor Vehicle Driving Privilege Requirements	Counties (Tax Collectors)	Procedural	1	Amends s. 320.055, F.S., to require an owner of a motor vehicle whose driver license has been suspended for DUI to obtain a six month vehicle registration, subject to renewal during the three year period that financial responsibility requirements apply, as a condition of reinstating the license.	It is possible that county tax collectors, especially in large or urban counties, may experience additional workload resulting from the requirement for affected drivers to register their automobiles twice annually rather than once. The additional registrations may necessitate additional staff, depending upon the volume of registrations. (House Bill Analysis, 4/1/05.)	To the extent that local tax collectors may need to acquire additional resources to handle increased workloads, the bill may require a few large or urban counties to spend money or take action that requires the expenditure on money. However, any such expenditure is expected to be insignificant, therefore the bill does not appear to be an unfunded mandate as contemplated by Art. IX, sec. 18 of the Florida Constitution. (House Bill Analysis, 4/1/05.)

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2005-77	319	Freedom to Worship Safely Act	Counties	Procedural	1	Creates s. 775.0861, F.S., upgrades the degree of an offense that involves the use or threat of physical force or violence if the offense is committed on the property of a religious institution while the victim is on the property for the purpose of participating in or attending a religious service.	The Criminal Justice Impact Conference estimates that the prison bed impact of this bill will be **insignificant**. (House Bill Analysis, 3/30/05)	Not Applicable. (House Bill Analysis, 3/30/05)
2005-100	656	Deputy James Weaver Act	Counties and Municipalities	Constraint	1	Amends s. 112.19(2)(b),F.S., to provide death benefits in the sum of $50,000 for an officer who is killed at the scene of a traffic accident or while enforcing a traffic law or ordinance. These death benefits will be treated in the same manner as death benefits for an officer who is killed during fresh pursuit or during response to an emergency.	These benefits are paid by the employing agency. This bill could have a fiscal impact on counties and municipalities. (Senate Bill Analysis, 4/14/05)	It appears likely that the aggregate impact on counties and municipalities would be **insignificant**. (Senate Bill Analysis, 4/14/05).
2005-106	908	Wekiva Parkway and Protection	Counties and Municipalities	Procedural	1	Amends s. 369.321, F.S., requiring local governments hosting an interchange on the Wekiva Parkway to adopt an interchange land use plan within 1 year after the interchange location is established.	None. (Senate Bill Analysis, 3/10/05)	None. (Senate Bill Analysis, 3/10/05)
2005-107	1366	Storm Infrastructure	Counties and Municipalities	Procedural	1	Specifies duties of Electric Utilities that have issued storm-recovery bonds.	Local governments operating electric utilities will need to comply with requirements. Senate Bill Analysis does not address the issue.	None. (Senate Bill Analysis, 4/21/05)
2005-111	1486	Property Insurance	Specific County (Monroe)	Programmatic	7	Establishes a pilot program in Monroe County to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition.	None. (Senate Bill Analysis, 3/9/05)	None. (Senate Bill Analysis, 3/9/05)
			Counties (Property Appraisers)	Procedural	21	Requires County Property Appraiser to record the report and certification with the parcel number.		
2005-114	2196	Shared County/State Juvenile Detention Trust	Counties	Procedural	1	Creates the Shared County/State Juvenile Detention Trust Fund in the Department of Juvenile Justice. Requires Counties to set aside detention costs at the beginning of each fiscal year and make monthly payments to the state.	None. (Senate Bill 2196, 4/4/05)	None. (Senate Bill Analysis, 4/4/05)
2005-117	69	Fire Prevention and Control	Counties	Procedural	3	Amends s. 633.171, F.S., to provide definitions and criminal penalties for initiating a pyrotechnic display in certain structures under certain circumstances.	The Criminal Justice Estimating Conference estimates that this bill will have an insignificant prison bed impact. (House Bill Analysis, 4/21/05.)	The estimated cost appears to be well below the threshold of the i**nsignificant** fiscal impact exception. (House Bill Analysis, 4/21/05.)

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2005-119	233	Unlawful Killing of an Unborn Quick Child	Counties	Procedural	1	Amends s. 782.09, F.S., providing that killing an unborn quick child by injury to the mother which would be murder in any degree if it resulted in the death of the mother is murder in the same degree.	The Criminal Justice Estimating Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. (House Bill Analysis, 4/6/05)	**EXEMPT: Criminal Law** (House Bill Analysis, 4/6/05)
2005-122	531	Certificates of Release for Mortgages	Counties (Clerks)	Procedural	1	Requires the County Recorder which could be either the Clerk of Court or Comptroller, to record mortgage release certificates.	This bill does not appear to have a fiscal impact on local governments. (House Bill Analysis, 4/7/05)	None. (House Bill Analysis, 4/7/05)
2005-132	1322	Public Service Commission	Counties and Municipalities	Procedural	8	Requires local governments to develop and follow a written business plan, hold a series of public hearings, and conduct an annual review to consider the progress toward reaching goals of the business plan.	None. (Senate Bill Analysis, 4/6/05)	None. (Senate Bill Analysis, 4/6/05)
2005-133	838	Medicaid Reform	Counties	Programmatic	2	Requires certain counties to be included in the Medicaid managed care pilot program.	None. (Senate Bill Analysis, 4/22/05)	Depending on how the managed care pilot projects are approved and implemented, the provisions of this bill may change the current cost sharing responsibilities for the Medicaid program, which may impact municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution. (Senate Bill Analysis, 4/22/05)
2005-139	1020	Police, Fire, SAR Dogs/Police Horses	Counties and Municipalities	Procedural	1	Provides that any person who intentionally and knowingly, without lawful justification causes great bodily harm or uses a deadly weapon against a police dog, fire dog, SAR dog, or police horse commits a felony of the third degree.	None. (Senate Bill Analysis, 3/1/05)	None. (Senate Bill Analysis, 3/1/05)
2005-146	193	Hazing	Counties	Procedural	1	Amends s. 1006.63, F.S., to provide criminal penalties for hazing at high schools with grades 9-12. Requires court to impose a hazing education course.	The Criminal Justice Estimating Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. (House Bill Analysis, 4/18/05)	Not Applicable. (House Bill Analysis, 4/18/05)
2005-147	442	Building Safety	Counties and Municipalities	Procedural	17	Requires a local government to provide the owner of any one or two-family dwelling a letter documenting specific infrastructure or other tax or fee allowances or waivers that are listed in but not limited to those described in subsection (9) for the dwelling.	None. (Senate Bill Analysis, 4/21/05)	None. (Senate Bill Analysis, 4/21/05)
			Counties	Procedural	35	Provides requirements, procedures and deadlines for local governments to notify applicants of information needed to properly complete application. Also provides procedures and deadlines for approval of applications.		

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2005-148	1244	Tax/Gross Receipts for Utilities	Counties and Municipalities	Procedural	1	Imposes a tax on gross receipts from utility services that are delivered to a retail consumer in this state.	None. (Senate Bill Analysis, 4/11/05)	None. (Senate Bill Analysis, 4/11/05)
2005-150	2048	Judges	Counties (Clerks)	Procedural	1	Revises the number of county court judges in certain counties.	The bill will also create a significant increase in the workload of the Clerk of the Courts. In addition, new judges would require an increase in the facilities, security, and information technology. Such costs for trial court judges are the responsibility of the counties. (Senate Bill Analysis, 4/21/05)	Under s. 29.008, F.S., counties are responsible for facilities costs for county and circuit courts. This bill will have an impact on counties to the extent that the additional judgeships create increased facilities costs. (Senate Bill Analysis, 4/21/05)
2005-154	401	Southwest Florida Transportation	Specific Counties	Procedural	1	Creates s. 348.9932, F.S., the Southwest Florida Expressway Authority encompassing Collier and Lee Counties. Providing membership and procedures of operation.	**Indeterminate.** The bill does not specify how startup costs for the Authority, such as hiring staff and consultants, will be paid. Since the TFRTF and the SIB may not be used for administrative costs, presumably Lee and Collier counties will contribute funds to pay startup costs for the expressway authority, but it is not known how much will be contributed. (House Bill Analysis, 3/15/05)	This mandates provision is not applicable to HB 401 because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing. (House Bill Analysis, 3/15/05)

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2005-157	955	Waterfront Property	Counties	Procedural	1	Provides that the land use element, for coastal counties, must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts.	The bill will impact the revenue stream of local governments in two ways if property owners within their taxing authority defer their taxes. First, it will limit the short term cash flow the local governments would receive from the taxes deferred on the property. Second, it will increase the total amount the local government will receive on the property because the deferred amount will accrue interest during the deferral. The amount of each effect could not be adequately estimated at the time of analysis because there is no method of determining how many property owners would avail themselves of this option or the amount of taxes and other assessments that would be deferred. (House Bill Analysis, 4/22/05)	None. (House Bill Analysis, 4/22/05)
			Counties	Procedural	12	Requires that counties provide the Fish and Wildlife Conservation Commission with an annual detailed accounting report of vessel registration revenues no later that November 1 of each year.		
			Counties (Tax Collectors)	Procedural	14	Requires the tax collector to notify a community redevelopment agency of any tax deferral that has been granted on property located within the community redevelopment area of the agency. Also requires the tax collector to render findings, determinations, and decision on each annual application for tax deferral for recreational and commercial working waterfronts with 45 days after the date the application is filed. Includes other notification requirements.		
			Counties (Property Appraisers)	Procedural	14	Requires the property appraiser to notify the tax collector in writing when there has been a change in the use or ownership of the property that has been granted a tax deferral.		
2005-159	1025	Misuse of Laser Lighting Device	Counties and Municipalities	Procedural	1	Provides that a person who knowingly and willfully shines, points, or focuses the beam of a laser lighting device on an individual operating a motor vehicle, vessel, or aircraft commits a felony of the third degree.	None. (House Bill Analysis, 4/19/05)	Although a law enforcement officer, in the course of his or her traffic enforcement duties, may point a laser device at a motor vehicle to measure its rate of speed, such act does not appear to be criminal under the provisions of the bill because the officer is intending to apply the laser to the vehicle, not its operator. The act is only criminal if the perpetrator knowingly and willfully shines, points, or focuses the beam on an individual who is operating a motor vehicle, vessel, or aircraft. (House Bill Analysis, 4/19/05)

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2005-167	60	Florida Retirement System	Counties and Municipalities	Procedural	1	Amends s. 121.0515, F.S., to provide membership in the Special Risk Class for certain employees of law enforcement agencies or medical examiner's offices whose duties include collecting, examining, preserving, documenting, preparing, or analyzing physical evidence.	The bill would add an unknown number of additional positions to the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience due to the provisions of this bill would be reflected in rates recommended by future actuarial studies of the FRS. (Similar House Bill Analysis, 4/20/05)	The mandates provision appears to apply because this bill requires counties and municipalities to expend funds to implement its provisions. However, the bill contains a statement of important state interest, and applies equally to all similarly situated persons. Thus, it appears to meet one of the exceptions. (Similar House Bill Analysis, 4/20/05)
			Counties and Municipalities	Constraint	1			
2005-171	620	Wireless Emergency Telephone System	Counties and Municipalities	Procedural	4	Provides standards for local governments to follow when regulating the placement, construction, or modification of a wireless communications facility.	Local governments may lose revenue if they are currently requiring wireless providers to pay higher permit fees than they are requiring other entities to pay for permit reviews. There may be some additional expenses associated with incorporating the wireless E911 fees into the county's annual audit. (Senate Bill Analysis, 4/12/05)	None. (Senate Bill Analysis, 4/12/05)
			Counties and Municipalities	Procedural	4	Directs local governments to grant or deny properly completed applications within a specified time frame.		
			Counties and Municipalities	Procedural	4	Directs local governments to notify applicants in writing and indicate deficiencies in the content of required documents within a specified time frame.		
			Counties and Municipalities	Procedural	4	Amends s. 365.173, F.S., to direct how a county may use funds derived from the E911 fee.		
2005-174	786	Fees Imposed on Tires and Battery Sales	Counties and Municipalities	Constraint	1	Amends ss. 403-718 and 403.7185, F.S., to clarify that governmental entities are required to pay the $1.00 per tire fee imposed on the retail sale of new motor vehicle tires and the $1.50 fee imposed on the retail sale of any new or remanufactured lead-acid battery.	**Indeterminate.** Data is not available to determine the level of governmental entities currently paying the fees and those that do not pay the fees. (Senate Bill Analysis, 4/11/05)	None. (Senate Bill Analysis, 4/11/05).
2005-186	1922	Public Records and Public Meetings Exemptions	Municipalities	Procedural	1	Provides an exemption from public records requirements for a complaint of an alleged violation of part III of ch. 112, F.S., the Code of Ethics.	Compliance with public records requirements has a fiscal impact, though unquantifiable. Government employees must locate requested records and must examine every requested record to determine if a public records exemption prohibits release of all or part of a record. (Senate Bill Analysis, 4/22/05)	None. (Senate Bill Analysis, 4/22/05)
2005-187	2070	Tax/Substitute Communications Systems	Counties and Municipalities	Procedural	6	Amends s. 202.19, F.S., deleting a provision authorizing the imposition of a local communications services tax on substitute communications systems.	According to the Revenue Estimating Conference, there would be a decrease in state revenues of at least $300,000 and a decrease in local revenues of at least $100,000. (Senate Bill Analysis, 4/22/05)	None. (Senate Bill Analysis, 4/22/05)

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2005-190	185	Public Records and Public Meetings Exemptions	Counties and Municipalities	Procedural	1	Creates s. 383.412, F.S., providing an exemption from public records requirements for any information that reveals the identity of surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by a state or local child abuse death review committee.	The bill could create a fiscal impact on local governments, because local committee staff would have to be trained with regard to the categories of information that is confidential and exempt from public disclosure versus records that are available for public inspection and copying. The local committees could also incur costs associated with redacting confidential and exempt information prior to releasing a record. (House Bill Analysis, 4/20/05)	Fl. Const. art. I,§ 24(c), requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage. (House Bill Analysis, 4/20/05) [This bill did receive the required two-thirds vote]
2005-197	643	Exemption from the Tax on Sales, Use, and other Transactions for Farm Equipment	Counties	Constraint	2	Provides that there shall be no tax on the sale, rental, lease, use, consumption, or storage of power equipment used exclusively on a farm or in a forest in the production of crops or products as produced by those agricultural industries.	Revenue Sharing 2005-06 ($1.2m) 2006-07 ($1.3m) Local Option 2005-26 ($ .8m) 2006-07 ($ .9m) Total 2005-06 ($2.0m) 2006-07 ($2.2m) (House Bill Analysis, 4/1/05)	This bill reduces the authority of counties to raise revenue through local option sales taxes. However, because the reduction is less than $1.8 million, it is **insignificant** and is not considered a mandate under Fl. Const. art. VII,§ 12. (House Bill Analysis, 4/1/05)
2005-205	1159	Florida Retirement System	Municipalities	Procedural	2	Provides that a municipality that provides fire protection services to another municipality under an interlocal agreement is eligible to receive premium taxes. The municipality providing the fire protection must notify the division (Retirement) that it has entered into an interlocal agreement with another municipality in order to be eligible for preium taxes.	Municipalities providing fire service to other municipalities will receive an **indeterminate** amount of additional revenues to fund firefighter pension plans. (House Bill Analysis, 4/22/05)	The mandates provision does not apply because this bill does not reduce the ability of cities or counties to raise revenues, does not require a city or county to spend funds, and does not reduce the percentage of a state tax shared with cities or counties. (House Bill Analysis, 4/22/05)
2005-210	1717	Agriculture	Counties and Municipalities	Procedural	14	Amends s. 570.07, F.S., to require any local government enforcing the subject areas of paragraphs (a-n), which provide for the functions, powers. and duties of the Department of Agriculture and Consumer Services, to use standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes.	The Revenue Estimating Conference projects that the reduced assessment for obsolete agricultural equipment would result in a loss of revenue to local governments on an annualized basis of $.9 million for FY 2005-06 and $.9 million on a cash basis for FY 2006-07. (House Bill Analysis, 4/25/05)	Although the bill reduces the authority of cities and counties to raise revenues in the aggregate, the impact is less than $1.8 million and is **insignificant**. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution. The estimated reduction in ad valorem tax revenues to local governments by this bill is approximately $.9 million. (House Bill Analysis, 4/25/05)
2005-214	1184	Easements	Counties and Municipalities	Procedural	2	Amends s. 704.01, F.S., to define statutory easements and procedures under which the easements are established and maintained.	Landlocked property used for certain purposes or intended for such use will be accessible regardless of the property's location. When government property borders a landlocked parcel within a municipality, the government may be compelled to provide an easement to the landlocked property owner. (Senate Bill Analysis, 4/5/05)	None. (Senate Bill Analysis, 4/5/05)

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2005-217	331	Inland Lakes and Canals	Counties and Municipalities	Procedural	1	Amends s. 327.40, F.S., to exempt from the permitting requirements of the section, counties, municipalities, or other governmental entities located on inland lakes and their associated canals.	Local governmental entities should realize a reduction in costs resulting from this exemption as they will no longer be required to obtain such permits. (House Bill Analysis, 3/30/05)	Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties. (House Bill Analysis, 3/30/05)
2005-220	878	Delinquent Property Taxes	Counties	Programmatic	1	Requires Lake, Marion, Seminole and Sumter counties to enter into a pilot program for the next two full property tax cycles.	The bill will decrease expenditures by tax collectors for advertising tax certificate sales. (Senate Bill Analysis, 3/14/05)	None. (Senate Bill Analysis, 3/14/05)
			Counties (Tax Collectors)	Procedural	1	Requires tax collector of these counties to submit a report to the President of the Senate and Speaker of the House, which compares the effectiveness of single publication versus the effectiveness of triple publication by listing the number and percentage of properties on which delinquent taxes were paid after the single publication in comparison to the number and percentage of properties on which delinquent taxes were paid after three notices.		
2005-229	481	Unlawful use of Personal Identification Information	Counties and Municipalities	Procedural	1	Increases penalties for the unlawful use of personal identification information, including counterfeit or fictitious person identification information and commission of fraud on another person.	On February 22, 2005, the Criminal Justice Impact Conference decided that the portions of the bill relating to criminal penalties would have an indeterminate but expected minimal impact on the prison population of the Department of Corrections. (House Bill Analysis, 4/22/05)	None. (House Bill Analysis, 4/22/05)

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Table 1
Mandates -2005 General Session

Chapter Law	Bill #*	Subject	Type of Local Government Impacted	Type of Mandate	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)	Applicability of Art VII, s. 18, Fla. Const. (As stated in bill analysis)
2005-230	509	Prompt Payment for Construction Services	Counties and Municipalities	Procedural	3	Requires that each contract for construction services between a local government and a contractor develop a list of required items.	The bill could have a fiscal impact on state and local governments. The expenditures could occur when filing suit to enforce the provisions of this bill or from interest payments required when governments do not act in accordance with new timelines for payment of construction services. Since the number of instances governments would fail to meet the established payment timelines cannot be predicted, neither can the amount of interest that would accumulate. Governments may also lose the ability to earn interest when conforming to the reduced payment timelines and the early payment of retainage and reduction of retainage after 50-percent completion of the construction services. However, that value is not measurable. Because the bill establishes a new rate of interest for late payment of construction services after July 1, 2006, the Department of Financial Services has estimated a cost of $22,000 for modifying business documents, changing system programs, and testing program changes, as well as the number of work hours necessary to complete these changes. (House Bill Analysis, 4/20/05)	None. (House Bill Analysis, 4/20/05)
			Counties and Municipalities	Procedural	3	Creates timelines and procedures on local governments for payment of contractors.		
2005-236	1935	State Judicial System	Counties (Clerks)	Procedural	34	Provides procedures for the clerks determination of civil indigent status.	There may be an increase in workload for the Clerks of Court based on increased requirements for indigency determination and a new process for determination of civil indigent status. The impact is **indeterminate**. (House Bill Analysis, 4/26/05)	Not Applicable. (House Bill Analysis, 4/26/05)
			Counties (Clerks)	Procedural	39, 41	Provides procedures for collecting and remitting unclaimed moneys by clerk.		
2005-241	370	Judgment Liens	Counties (Clerks)	Procedural	1	Amends s. 55.141, F.S., to provide a standardized form for the satisfaction of judgment executed by the clerk. Provides procedures clerk with regards to judgment liens.	The bill would have an insignificant fiscal impact on the Clerks of the Court. (Senate Bill Analysis, 4/2/05)	None. (Senate Bill Analysis, 4/2/05)
		Judgment Liens	Counties (Sheriffs)	Procedural	9	Provides that the Sheriff shall send notice of levy and execution sale and a copy of the affidavit required by s. 56.27 (4), F.S. to the attorneys of record or the creditors who do not have an attorney of record.		
2005-259	77	Waste-to-Energy Facilities	Municipalities	Procedural	1	Creates s. 366.91, F.S., to require public and municipal utilities, and rural electric cooperatives to offer a purchase contracts to producers of renewable energy.	None. (House Bill Analysis, 3/14/05)	Bill does not appear to require cities or counties to spend funds, or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities and counties. (House Bill Analysis, 3/14/05)
2005-268	1194	Homestead Assessments	Counties (Property Appraisers)	Procedural	1	Allows homestead property owners impacted by the 2004 hurricane season to rebuild their damaged property without incurring higher property assessments provided the repairs are completed by January 1, 2008.	The property appraisers will have to adjust their assessment procedures for property rendered uninhabitable by one of the named storms of 2004 to reflect the requirements of this legislation. (Senate Bill Analysis, 3/30/05)	None. (Senate Bill Analysis, 3/30/05)

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Table 1
Mandates -2005 General Session

Chapter Law	Bill #*	Subject	Type of Local Government Impacted	Type of Mandate	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)	Applicability of Art VII, s. 18, Fla. Const. (As stated in bill analysis)
2005-271	101	Tax on Sales, Use, and other Transactions	Counties and Municipalities	Constraint	1	Creates the "Sales Tax Holiday" requiring that no tax levied under the provisions of ch. 212, F.S., shall be collected on the sale of specific items having a sales price of $50 or less during the last 9 days of July 2005. The bill also provides that no sales tax shall be collected on the sale of school supplies having a selling price of $10 or less during this same period.	Local FY 2005-06 Cash: ($6.6 million) (Measures Affecting Revenue and Tax Administration 2005 Regular Session 6/30/05)	The estimated reduction in the Local Option Sales Tax by this bill is $3.8 million. The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments requiring 2/3 vote of the membership of each house of the Legislature. (House Bill Analysis, 3/15/05)
2005-277	1567	Elections	Counties (Supervisors of Elections)	Procedural	11, 24	Provides procedures for supervisor of elections to verify the signatures on petitions. Revises requirements with respect to certifying signatures and notifying candidates of the inspection of ballots.	None. (House Bill Analysis, 4/20/05)	None. (House Bill Analysis, 4/20/05)
2005-278	1589	Elections	Counties (Supervisors of Elections)	Procedural	15, 36, 38	Provides requirements for voter registration, absentee and early ballot casting and precinct-level election results.	The workload for supervisors may actually be reduced with respect to maintenance of their county voter registration lists. The supervisors will realize some cost savings attributed to mailing of address confirmations for voter list maintenance. They may have some cost savings from not having to buy some voting machines where more than one precinct meets at one polling place. (House Bill, 4/15/05)	None. (House Bill Analysis, 4/15/05)
2005-283	572	Consumer Protection/ Emergencies	Counties and Municipalities	Procedural	1	Provides for criminal penalties for any person who fails to possess an occupational license and offers goods and services for sale to the public during a declared state emergency. Also directs local law enforcement to assist and accommodate businesses and their employees in ensuring that commodities are available in coping with emergency.	Government entities that elect to pursue prosecution for violations of this committee substitute will incur related legal and administrative costs. (Senate Bill Analysis, 4/13/05)	None. (Senate Bill Analysis, 4/13/05)
2005-287	1725	Enterprise Zone	Counties and Municipalities	Procedural	1	Provides requirements and procedures for nominating, designating and maintaining an enterprise zones.	FY 05-06 cash: $ (0.8) million, recurring: $ (0.8) million; FY 06-07 cash: $ (0.8) million, recurring: $ (0.8) million. (Measures Affecting Revenue and Tax Administration 6/30/05)	The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties. (House Bill Analysis, 4/22/05)

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Table 1
Mandates -2005 General Session

Chapter Law	Bill #*	Subject	Type of Local Government Impacted	Type of Mandate	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)	Applicability of Art VII, s. 18, Fla. Const. (As stated in bill analysis)
2005-290	360	Growth Management/ Infrastructure Funding	Counties and Municipalities	Procedural	2	Requires each county and each municipality, unless exempt, to adopt a public school facilities element that is consistent with those adopted by the other local governments within the county and enter into the interlocal agreement pursuant to s. 163.31777,F.S.	The bill requires counties to engage in planning activities that will require them to expend funds. However, the revenue sources in the bill, available to counties with a majority vote of the governing body, and the state appropriations will help defer any administrative costs.	The unrealized revenue capacity for these local option taxes would provide an estimated $4.46 billion for local governments that could be bonded to fund transportation, schools, and water supply facilities.
114			Counties and Municipalities	Procedural	2	Requires local government to consider the transportation level-of-service standards of adjacent jurisdictions for certain roads.		
			Counties and Municipalities	Procedural	2	Provides requirements for the evaluation and assessment of the comprehensive plan for local governments that do not have a public schools interlocal agreement.		

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Table 1
Mandates -2005 General Session

Chapter Law	Bill #*	Subject	Type of Local Government Impacted	Type of Mandate	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)	Applicability of Art VII, s. 18, Fla. Const. (As stated in bill analysis)
2005-291	444	Water Resources	Counties and Municipalities	Procedural	9	Directs local governments in combination with affected water utilities and special districts to develop multijurisdictional approaches to water supply project development.	The bill does not provide for a specific funding source. A detailed description is provided in the "Effects of Proposed Changes Section" of the analysis. (Senate Bill Analysis, 4/2//05)	None. (Senate Bill Analysis, 4/29/05)
			Counties and Municipalities	Procedural	10	Requires a local government located within two water management districts to adopt its comprehensive plan amendment within 18 months after the later updated regional water supply plan. Provides criteria for plans.		
			Counties and Municipalities	Procedural	11	Requires local government to consult with the water supplier to determine whether adequate water supplies will be available to serve a new development before the local government issues a certificate of occupancy.		
2005-356	41 B	Judges	Counties (Clerks)	Procedural	1-2	Increases the number of circuit judges for the Twentieth Circuit from 23-25 and increases the number of county court judges for Collier County from 3 to 5.	The bill could result in an increase in the workoad of the Clerk of the Courts in the Twentieth Circuit and in Collier County. (Senate Bill Analysis, 12/5/05)	None. (Senate Bill Analysis, 12/5/05)
2005-360	8 B	In-Kind Contributions	Counties	Procedural	2	Requires county executive commttees to file copies of each prior written acceptance of an in-kind contribution given by the committee during the preceding calendar quarter with the Division of Elections.	None. (Senate Bill Analysis, 12/5/05)	None. (Senate Bill Analysis, 12/5/05)

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Table 2
New or Expanded Revenues - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)
2005-72	19	Motor Vehicle Driving Privilege Requirements	Counties (Tax Collector)	1	Amends s. 320.055, F.S., to require an owner of a motor vehicle whose driver's license has been suspended for DUI to obtain a six month vehicle registration, subject to renewal during the three year period that financial responsibility requirements apply, as a condition of reinstating the license.	To the extent that local tax collectors may need to acquire additional resources to handle increased workloads, the bill may require a few large or urban counties to spend money or take action that requires the expenditure on money. However, any such expenditure is expected to be **insignificant,** therefore the bill does not appear to be an unfunded mandate as contemplated by Fl. Const. art. IX, §18. (House Bill Analysis, 4/1/05.)
2005-102	724	Affordable Housing for the Elderly	Counties and Municipalities	1	Amends s. 420.5087, F.S., to increase the maximum loan amount for projects funded through the Elderly Housing Community Loan Program from 200,000 to 750,000 per housing community.	The bill may increase revenues to local governments providing housing renovations for the elderly. (Not specifically addressed in Senate Bill Analysis)
2005-153	75	Title Insurance	Counties	1	Amends s. 624.608, F.S., to change the title insurance forms and corresponding rates for title insurance.	Counties may receive increased revenue and taxes due to the additional licensures and appointments for title insurance agents and agencies. (House Bill Analysis, 4/26/05.)
2005-164	1697	Highway Safety	Counties (Tax Collectors)	47	Allows tax collector to keep the entire $5.25 convenience service fee.	Under the provisions of the bill, local tax collectors acting as agents of DHSMV for the purposes of providing driver's licensing services will retain the entire $5.25 convenience fee paid by customers instead of remitting $1 of that amount to DHSMV. This change will result in a positive fiscal impact to those tax collectors. (House Bill Analysis, 4/22/05)
2005-194	497	Highway Safety	Counties and Municipalities	1	Amends s. 318.18, F.S., to increase the fine from $60 to $125 for a driver failing to obey a traffic control signal device.	The bill may have a positive fiscal impact on local governments to the extent that some funds may be directed to trauma centers which currently receive local government funding. (House Bill Analysis, 4/13/05)
2005-226	71	Motor Vehicle Speed Competitions	Counties (Clerk)	1	Amends s. 316.191, F.S., to increase the minimum fine from $250 to $500 and the maximum fine from $500 to $1000. This also provides that a first conviction for this section will be a first degree misdemeanor instead of second degree misdemeanor.	Indeterminate. To the extent that this bill results in offenders serving more time in county jail as a result of increasing the offense from a second to a first degree misdemeanor, it may have some impact on county jail populations. (House Bill Analysis, 5/9/05)
2005-242	470	Indigent Care Surtax	Counties	1	Provides that the governing body of a county that has a population of fewer than 50,000 residents may levy an indigent care surtax.	Imposition of this tax will provide applicable counties with additional resources to fund hospital and health care services for indigent and medically poor persons [defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; or not being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage]. (Senate Bill Analysis, 2/15/05)

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Table 2
New or Expanded Revenues - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)
2005-260	925	Traffic Regulations	Counties and Municipalities	1	Amends s. 316.1303, F.S., to expand the definition of mobility impaired pedestrians to include people using guide dogs or service animals.	To the extent that additional citations are issued for drivers not stopping for pedestrians with guide dogs or service animals, civil penalty revenue will be increased. Any increase in revenue would likely be insignificant. (House Bill Analysis, 4/5/05)
2005-261	1029	Funding for Dredging Projects	Counties and Municipalities	1	Creates s. 311.115, F.S., to make funds available to fund dredging projects in counties having a population of less than 300,000.	Indeterminate. Only those eligible counties could apply for the dredging grants, and its 50-50 share depends on the project costs. (House Bill Analysis, 4/12/05)
2005-275	1459	Liens and Commercial Real Estate	Counties	1	Allows the clerks of court to collect a service fee.	None. (House Bill Analysis, 4/26/05)
2005-282	202	Community Contribution Tax Credit	Counties and Municipalities	3	Amends s. 624.5105, F.S., to increase the amount of available annual community contribution tax credits from $10 million to $12 million.	Government agencies that sponsor low-income housing projects and community development projects may receive additional funding in support of such projects and activities by extending the program and increasing the cap. (Senate Bill Analysis 202, 4/21/05) FY 05-06 $0.9 million cash; $1.1 million recurring; F Y06-07 $1.1 million cash; $1.1 million recurring (Measures Affecting Revenue and Tax Administration, 6/30/05)
2005-291	444	Water Resources	Counties and Municipalities	17	Provides general funding criteria for funding assistance to the state or water management districts. Providing that funding assistance for alternative water supply development be limited to a percentage of the total capital costs of an approved project.	The bill does not provide for a specific funding source. A detailed description is provided in the "Effects of Proposed Changes Section" of the analysis. (Senate Bill Analysis, 4/2//05)

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Table 3 Decreased Expenditures - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)
2005-44	285	Right to a Speedy Trial	Counties	1	Creates time limits within which a person must be brought to trial.	To the extent that this bill results in criminal cases being more quickly resolved, it may decrease the financial burden on counties for detaining a prisoner awaiting trial in county jail. (House Bill Analysis, 4/18/2005)
2005-171	620	Wireless Emergency Telephone System	Counties and Municipalities	4	Provides that for the purpose of this section, the state and local government are not customers.	This bill exempts local governments from paying wireless E911 fees. (Senate Bill Analysis, 4/12/05)
2005-187	2070	Tax/Substitute Communications Systems	Counties and Municipalities	6	Amends s. 202.19, F.S., deleting a provision authorizing the imposition of a local communications services tax on substitute communications systems.	According to the Revenue Estimating Conference, there would be a decrease in state revenues of at least $300,000 and a decrease in local revenues of at least $100,000. (Senate Bill Analysis 2070, 4/22/05)
2005-200	913	Littering	Counties and Municipalities	1	Increases the fine from $50 to $100 for any person who litters on public land, waterways, or private property. Provides that $50 of this must be deposited in the Solid Waste Management Trust Fund.	In so far as the proposed legislation reduces littering, each entity engaged in trash clean up may be able to reduce its spending for that activity. (House Bill Analysis, 4/6/05)
2005-217	331	Inland lakes and Canals	Counties and Municipalities	1	Amends s. 327.40, F.S., to exempt from the permitting requirements of the section, counties, municipalities, or other governmental entities located on inland lakes and their associated canals.	Local government entities should realize a reduction in costs resulting from this exemption as they will no longer be required to obtain such permits. (House Bill Analysis, 3/30/05)

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Table 3 Decreased Expenditures - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions	Fiscal Impact (As stated in bill analysis or impact conference)
2005-220	878	Delinquent Property Taxes	Counties	1	Requires Lake, Marion, Seminole and Sumter counties to enter into a pilot program for the next two full property tax cycles. Also requires tax collectors in each of the named counties to submit a report which compares the effectiveness of single publication versus triple publication.	The bill will decrease expenditures by tax collectors for advertising tax certificate sales. (Senate Bill Analysis, 3/14/05)
2005-263	1917	Juvenile Justice	Counties	1	Requires state to pay certain detention care costs for juveniles in Highlands, Sumter and Wakulla counties for fiscal year 2005-2006.	These counties may experience a decrease in expenditures related to detention care cost for juveniles. (Not specifically addressed)

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Table 4
Preemptions of Discretionary Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-74	255	Rabies Vaccination	Counties and Municipalities	1	Amends s. 828.30, F.S., to revise requirements for the frequency of rabies vaccination for specified animals.
2005-147	442	Building Safety	Counties and Municipalities	6	Amends s. 489.537, F.S., providing that local governments may not require certain alarm system and electrical contractors to obtain additional certification or meet additional licensure requirements.
			Counties and Municipalities	17	Amends s. 633.025, F.S., to provide that local governments may not adopt a fire sprinkler requirement on one or two family dwellings without preparing an economic cost and benefit report.
2005-171	620	Wireless Emergency Telephone System	Counties and Municipalities	4	Prohibits local governments from imposing or requiring information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under ch. 553, F.S.
2005-230	509	Prompt Payment for Construction Services	Counties and Municipalities	3	Limits the amount of retainage that can be withheld on a construction project to 10% on the initial 50% of the project and 5% on the final 50% of the project.

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Table 4
Preemptions of Discretionary Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-288	181	Pari-mutuel Permit holders	Counties	1	Amends s. 550.334, F.S., to delete a provision to allow quarter-horse racing by vote of the county commission in lieu of referendum approval of such racing with a county.

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Table 5
Grants of Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-27	436	Protection of Persons Property	Counties and Municipalities	4	Authorizes a law enforcement agency to use standard procedures to investigate the use of deadly force.
2005-28	1877	Sexual Predators and Sexual Offenders	Counties	3	Authorizes Sheriff's office to determine the appropriate times and days for reporting by the sexual predator.
2005-35	655	Florida Inland Navigation District	Selected Counties	1	Amends s. 374.984, F.S., to include in the Inland Navigation District the portion of the Okeechobee Waterway located in Martin and Palm Beach counties. Authorizes improvements and maintenance.
2005-56	388	Student Financial Aid	Selected Counties	1	Amends s. 411.01, F.S., authorizing Sarasota, Osceola, and Santa Rosa counties to operate early learning coalitions.
2005-109	1436	Automated External Defibrillators	Counties and Municipalities	1	Authorizes local law enforcement vehicles to carry an automated external defibrillator.
			Counties and Municipalities	2	Authorizes local governments to use forfeiture funds for purchasing automated external defibrillators.
2005-126	871	Investment of Public Funds	Counties and Municipalities	2	Authorizes local governments and Chief Financial Officers to deposit any portion of surplus public funds in accordance with provided conditions.
2005-135	252	Florida Retirement System	Municipalities	1	Amends s. 121.182, F.S., to authorize municipalities to purchase annuities for municipal personnel in the same manner as counties may for county personnel.
2005-146	193	Relating to Hazing	Counties	1	Amends s. 1006.63, F.S., to provide criminal penalties for hazing at high schools with grades 9-12. Authorizes court to impose a condition of alcohol or drug probation in certain circumstances.
2005-147	442	Building Safety	Counties and Municipalities	12	Authorizes local governments to impose certain fees for code enforcement.

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Table 5
Grants of Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-154	401	Southwest Florida Transportation	Counties	1	Authorizes the expansion of the Southwest Florida Expressway into Charlotte County if warranted and desirable.
2005-157	955	Waterfront Property	Counties and Municipalities	14	Allows the governing body to authorize the deferral of ad valerem taxation and non-ad valorem assessments for recreation and commercial working waterfront properties.
			Counties (Tax Collectors)	14	Allows the tax collector to require the applicant to submit any other evidence and documentation as deemed necessary in considering the application for deferral.
2005-164	1697	Highway Safety	Municipalities	2	Allows a municipality, through interlocal agreement with county, to transfer traffic regulatory authority over areas within the municipality over to the county.
			Counties and Municipalities	6	Allows a local governmental entity to enact an ordinance regarding golf cart operation.
2005-165	1715	Domestic Security	Counties and Municipalities	4	Allows Regional Domestic Security Task Force memberships to include local law enforcement agencies.
2005-168	152	Alimony	Counties	1	Amends s. 61.14, F.S., to authorize court to reduce or terminate an award of alimony if there is proof by a preponderance of the evidence that the obligee is in a supportive relationship with another person not related by consanguinity or affinity.

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Table 5
Grants of Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-171	620	Wireless Emergency Telephone System	Counties and Municipalities	4	Allows a local government to impose a reasonable fee on zoning applications and the review of applications for wireless communications facilities if a similar fee is imposed on applicants seeking similar types of zoning and review.
			Counties and Municipalities	4	Allows a local government to impose design requirements for wireless communication towers to support collocation or aesthetic requirements.
			Counties and Municipalities	4	Authorizes local governments to continue requesting information until the application deficiencies are cured.
2005-205	1159	State Excise Tax on Property Insurance Premiums	Municipalities	2	Authorizes a municipality receiving fire protection services from another municipality to enact an ordinance levying the tax.
2005-214	1184	Easements	Counties	4	Authorizes local governments to file suit against an owner or owners who objects or refuses to permit the use of lands across which a statutory way of necessity is claimed.
2005-216	567	Alternative Plans and Review Inspection	Counties and Municipalities	1	A local government may establish, for private providers and duly authorized representatives, a system of registration to verify compliance with the licensure requirements of paragraph (1) (g) and the insurance requirements of subsection (15).
2005-217	331	Inland Lakes and Canals	Counties and Municipalities	1	Amends s. 327.40, F.S., to exempt counties, municipalities, or other governmental entities located on inland lakes and their associated canals from the permitting requirements for the placement of informational markers.

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Table 5
Grants of Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-236	1935	State Judicial System	Counties	18	Authorizes counties to enter into an agreement under which the county funds personnel positions to assist in the operation of the circuit.
			Counties (Clerks and Sheriffs)	39	Authorizes sheriffs and clerks of the courts of various counties at their discretion to pay certain deposited or collected funds into a specific fine and forfeiture fund.
			Selected Counties and Municipalities	48	Authorizes certain local governments to impose by ordinance a surcharge of up to $15 on any infraction or violation in addition to certain noncriminal traffic infractions and certain criminal violations.
2005-244	486	Enterprise Zones	Selected Counties and Municipalities (City of Lakeland; Indian River County-City of Vero Beach- Sebastian Jointly; Sumter County; and Orange County - Apopka Jointly)	1	Authorizes certain counties and municipalities to apply to the Office of Tourism, Trade, and Economic Development for designation of an enterprise zone.
2005-275	1459	Liens and Commercial Real Estate	Counties	1	Allows the clerks of court to collect a service fee for recording the owner's affidavit.
2005-290	360	Infrastructure Planning	Counties and Municipalities	2	Authorizing local government to approve a development order if the developer executes a commitment to mitigate the impacts on public school facilities.
2005-291	444	Water Resources	Counties and Municipalities	9	Allows a local government to choose to prepare its own water supply to determine if existing water sources are adequate to meet existing and projected needs.

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Table 5
Grants of Authority - 2005 General Session

Chapter Law	*Bill #	Subject	Type of Local Government Impacted	Section #	Description of Provisions
2005-355	15B	Ad Valorem Property Tax Payment Discounts	Counties	1	Authorizes a county that has been declared a major disaster area to adopt options extending the time in which a property tax payment made by a property owner qualifies for an early-payment discount.

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Chapter 2005-290, Laws of Florida

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 360

(Section 31 - Concerning the Creation of the Florida Impact Fee Review Task Force)

Section 31. Florida Impact Fee Review Task Force.—

(1) The Legislature recognizes that impact fees have been an important source of revenues to local governments to fund new growth. Local governments have assumed this responsibility under their constitutional home rule authority. With the increased use of impact fees, questions have arisen
about whether their use should be regulated by law.

(2) Effective upon this act becoming law, the Florida Impact Fee Review Task Force is created.

(3) The task force is to be composed of 15 members, who shall be appointed within 30 days after the effective date of this section.

1. Five voting members selected by the President of the Senate and five voting members selected by the Speaker of the House of Representative, none of whom may be a member of the Legislature at the time of the appointment, as follows: one member of a county commission, one member of a city commission or council, one member of a local school board, one member of the development community, and one member of the homebuilding community. The Governor shall appoint two members, one of whom shall be an affordable housing advocate who shall have no current or past direct relationship to local government, school boards, or the development or homebuilding industries. The Governor shall designate one of his or her appointees as the chair.

2. One member of the Senate appointed by the President of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, who shall be ex officio, nonvoting members.

3. The Secretary of the Department of Community Affairs or his designee is to serve as an ex officio, nonvoting member.

(4)(a) The task force shall act as an advisory body to the Governor and the Legislature.

(b) The task force shall convene its initial meeting within 60 days after the effective date of this section and thereafter at the call of its chair.

(c) Task Force members shall not receive remuneration for their services, but are entitled to reimbursement by the Legislative Committee on Intergovernmental Relations for travel and per diem expenses in accordance with section 112.061, Florida Statutes.

(5) The Task Force shall survey and review current use of impact fees as a method of financing local infrastructure to accommodate new growth and current case law controlling the use of impact fees. To the extent feasible, the review is to include consideration of the following:

(a) Local government criteria and methodology used for the determination of the amount of impact fees.

(b) Application and relative burden of impact fees in different areas of the state in relation to other methods of financing new infrastructure.

(c) The range of use of impact fees as a percentage of the total capital costs for infrastructure needs created by new development.

(d) The methods used by local governments for the accounting and reporting of the collection and expenditure of all impact fees.

(e) Notice provisions prior to adoption and the effective date of local ordinances creating a new impact fee or increasing an existing impact fee.

(f) Interlocal agreements between counties and cities to allocate impact fee proceeds between them.

(g) Requirements and options related to timing of impact fees payments.

(h) The importance of impact fees to the ability of local government to fund infrastructure needed to mitigate the impacts of development and meet statutory requirements for concurrency.

(i) Methods used by local governments to ameliorate the effect of impact fee costs on affordable housing.

(6) The task force shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2006. The report shall include the task force's recommendations regarding:

(a) Whether there is a need for statutory direction on the methodology and data used to calculate impact fees.

(b) Whether there should be statutory direction on payment, exemption, or waiver of impact fees for affordable housing.

(c) Whether there should be statutory direction on the accounting and reporting of the collection and expenditure of all impact fees.

(d) Whether there is a need for statutory direction on the notice given in advance of the effective date of a new or amended impact fee ordinance.

(e) Whether there is a need for statutory direction on the sharing of impact fees between counties and cities.

(f) Whether there is a need for statutory direction on the timing of payment of impact fees.

(g) Any other recommendation the Task Force deems appropriate. If the task force makes a recommendation for statutory direction, the report shall also contain the task force's recommendation for statutory changes.

(7) The Legislative Committee on Intergovernmental Relations shall serve as staff to the task force and is authorized to employ technical support and expend funds appropriated to the committee for carrying out the official duties of the task force. All state agencies are directed to cooperate with and assist the task force to the fullest extent possible. All local governments are encouraged to assist and cooperate with the commission as necessary.

(8) Effective July 1, 2005, the sum of $50,000 is appropriated, for fiscal year 2005-2006 only, from the Department of Community Affairs' Grants and Donations Trust Fund to the Legislative Committee on Intergovernmental Relations to fund the per diem and travel expenses of the task force pursuant to section 112.061, Florida Statutes.

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Tom Lee
President

Allan Bense
Speaker

The Florida Legislature
LEGISLATIVE COMMITTEE
ON INTERGOVERNMENTAL RELATIONS
% Legislative Mail Services, Tallahassee, FL 32399-1300 Ph. (850) 488-9627 Suncom 278-9627 Fax 487-6587

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Executive Director
Alton L. "Rip" Colvin, Jr.
Tallahassee

June 27, 2005

Secretary Alan Levine
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308-5403

Dear Secretary Levine:

Senator Dennis Jones, Vice Chair of the Legislative Committee on Intergovernmental Relations (LCIR), recently requested the Committee to direct LCIR staff to conduct a review of the Dental Managed Care Pilot Program in Miami-Dade County. A copy of Senator Jones's proposed project for staff is enclosed for your review. The project is designed to gather and analyze data in an effort to assess the success of the program.

While conducting preliminary research into the proposed project, LCIR staff was informed that the Agency for Health Care Administration (AHCA) has negotiated a contract with the University of Florida to conduct a review of the pilot program. AHCA staff advised the LCIR Executive Director that the agency anticipated its contract with the University of Florida would be executed by June 10, 2005. However, as of this date, the contract remains unexecuted.

Should the LCIR proceed with the interim project proposed by Senator Jones, it appears that much of that project would duplicate AHCA's efforts. This would not be a valuable use of state resources. Nonetheless, it is important that this pilot program receive a thorough and timely analysis.

During the LCIR's June 13th meeting in Delray Beach, several committee members expressed concern about any potential delay in executing this contract. In recognition of AHCA's efforts to secure the contract, however, the Committee voted to monitor this issue with the option to proceed with the interim project at a later date, if appropriate.

Thus, on behalf of the Committee, I am requesting that AHCA ensure that the questions posed by Senator Jones be specifically addressed as part of the scope of services required under the contract between AHCA and the University of

Florida. Further, the Committee urges AHCA and the University of Florida to execute the contract as soon as possible.

If you have any questions, please do not hesitate to contact Rip Colvin, the Committee's Executive Director, at 488-9627.

Sincerely,

Adam Hasner, Chairman

cc: LCIR Members

Enclosures

JEB BUSH, GOVERNOR

ALAN LEVINE, SECRETARY

July 20, 2005

The Honorable Adam Hasner, Chair
Legislative Committee
on Intergovernmental Relations
c/o Legislative Mail Services
Tallahassee, FL 32399-1300

Dear Representative Hasner:

The Agency for Health Care Administration has received your recent letter regarding the Prepaid Dental Health Care Plan in Miami-Dade County. I appreciate the Legislative Committee on Intergovernmental Relations' interest in this pilot program and share your concern for assessing the success of this new program using the most valid, cost-effective method possible. In fact, we had already begun negotiating an independent study of the program, to be completed by the University of Florida.

Upon receipt of your letter, we negotiated with the University of Florida to add the questions posed by Senator Jones in the contract's scope of services. We anticipate the contract will be executed within the next two weeks. The first report on the pilot program will be received three months after contract execution, with the final report due within five months of the submission of the initial report. We will forward copies of both the reports, containing answers to your questions, as soon as they are finalized.

Be assured the Agency takes seriously its mission to champion accessible, affordable, quality health care for all Floridians. We look forward to working with you and your colleagues in the Legislature in the coming months in serving Florida's most vulnerable citizens.

Sincerely,

Alan Levine
Secretary

AL/vjm

cc: Alternating Chair, Senator Dennis Jones
Tom Arnold, Deputy Secretary for Medicaid
✓Mandy Clark, AHCA Legislative Affairs Director

2727 Mahan Drive • Mail Stop #1
Tallahassee, FL 32308

Visit AHCA online at
http://ahca.myflorida.com

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Tom Lee
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Tallahassee

TO: LCIR Members

FROM: John Cherry, Legislative Analyst

SUBJECT: Natural Disaster Report Revisions

DATE: January 9, 2006

During the October 19, 2005 LCIR meeting, staff presented the draft interim project report on Natural Disaster Preparedness, Response & Recovery. Following that meeting staff reviewed comments by various members and stakeholders. Along with minor technical and grammatical changes to the document, staff added additional information and clarified certain points in the report based on our review of the meeting. Additional information outside of the original areas of research directed by the committee, when this project was assigned, has not been added. Below is a specific list of the substantive changes made to the report:

Section II **B. Emergency Management, Preparedness, and Assistance Trust Fund**
Pages 4-5 ***Substantive Changes:***
- ✓ 2004 EMPA Trust Fund receipts information added.
- ✓ Additional information regarding auditing procedures for insurance companies collected the EMPA fee from consumers added.

D. Debris Removal
Policy Option 2
Page 8 ***Substantive Changes:***
- ✓ Modified the policy option to include a request for reimbursement of interest to local governments who financed debris removal from private property during the 2004 storms.

Section V **A. Communicating with the Public**
Subsection ii. 2-1-1 Information Systems
Page 10 ***Substantive Changes:***
- ✓ Information regarding HB 249 and SB 156 filed regarding 2-1-1 systems for the 2006 Regular Legislative Session.

Section VII **A. Shelter Deficit**
Page 14 ***Substantive Changes:***
- ✓ Information regarding Shelter Deficits in Florida.

B. American Red Cross
Page 15 ***Substantive Changes:***
- ✓ Recommendation regarding credentialing of shelter volunteers.

D. Sexual Offender/Predator Shelter Issues

Page 16 ***Substantive Changes:***

- ✓ Information regarding identical bills that have been filed for the 2006 Regular Legislative Session in both the House (HB 249) and Senate (SB 156) by Representative John Legg and Senator Charlie Clary relating to the sheltering of sexual offenders/predators. The proposed legislation would prohibit sheltering of sexual offenders and designated sexual predators in public hurricane evacuation shelters.

E. Availability of Portable Toilets at Shelters

Page 16 ***Substantive Changes:***

- ✓ Recommendation to counties to purchase and store indoor portable toilets. The expense is reimbursable under FEMA's Category B, Protective Measures, Public Assistance Program.

F. Special Needs Shelters

Subsection ii. Special Needs Designation

Page 17 ***Substantive Changes:***

- ✓ Information regarding generator problems in special needs shelters that led DCA to recommend 90 shelter retrofit projects for generator or generator pre-wire.

Section XII. Post Disaster Issues

C. Condominiums

Pages 23-24 ***Substantive Changes:***

- ✓ Information regarding the authority of homeowner's associations to require condominium unit owners to purchase shutters.
- ✓ Information regarding neighborhood associations prohibiting residents from taking in evacuees from hurricanes, although subsequently overruled by the residents.
- ✓ Information regarding a low interest loan program to aid homeowners and owners of manufactured housing to retrofit their homes.

D. Manufactured Homes

Page 24 ***Substantive Changes:***

- ✓ Information regarding manufactured homes and federal and state law regarding these structures.
- ✓ Information regarding repairing mobile homes.

E. Building Code and Licensure

Page 25 ***Substantive Changes:***

- ✓ Additional information regarding Executive Order 04-188 which allowed Floridians holding certain contracting licenses to perform roofing repairs and information on subsequent expansions of this executive order.
- ✓ Information regarding how citizens can be "patched into" DBPR's phone bank through DCA's toll-free number to inquire about contractors licensing, complaints, etc.

G. Price Gouging

Page 26 ***Substantive Changes:***

- ✓ Additional information regarding claims of alleged price gouging made by residents to the Office of the Attorney General. Information regarding complaints in 2005 prior to Hurricane Wilma.

Tom Lee
President

Florida Legislative Committee on Intergovernmental Relations

Draft Interim Project Report

Allan Bense
Speaker

Natural Disaster Preparedness, Response & Recovery

January 2006

Summary

In 2004, the State of Florida was directly impacted by four hurricanes, an event not seen in the United States since 1886 in Texas. The storms combined damage totaled $56 billion and affected millions of Florida residents, with some residents being affected by more than one storm. In 2005 Florida was again affected by four hurricanes, Dennis, Katrina, Rita, and Wilma.

In order to assist the Legislature in developing strategies to improve intergovernmental coordination during natural disasters, the Legislative Committee on Intergovernmental Relations (LCIR) directed staff to conduct an in-depth study of several specific subject areas related to natural disaster preparedness, response and recovery. The aim of the study is to identify and aid in implementing measures which produce effective pre-disaster and post-disaster actions founded in good planning, training and preparation among federal, state and local leaders.

In conducting this project, LCIR staff developed a survey instrument and sent it to the local government emergency managers around the state to identify specific areas that they believe worked most effectively and least effectively during last year's storms and how deficiencies could be remedied.

In addition, LCIR staff kept an ongoing dialogue with all vital agencies involved in natural disaster preparedness, including the Federal Emergency Management Agency, the Division of Emergency Management within the Florida Department of Community Affairs, county and municipal governments and their emergency management divisions, school boards, and private organizations.

As a result of the staff's research, policy options were developed for consideration by the LCIR. Areas of interest addressed in the policy options include: Emergency Management, Preparedness and Assistance Trust Fund; Natural Disaster Policy at the Federal Level; Nursing Homes and Assisted Living Facilities; Sheltering, Special Needs and Volunteers; Public Private Coordination; Schools; Housing; Contractors and Post-Disaster Repairs; Fuel; and Evacuation Plans. Some of the policy options would require legislation to be adopted by Congress or the Florida Legislature, while others would simply necessitate adoption at the local level.

Policy Options:

Emergency Management, Preparedness and Assistance Trust Fund

- *The Legislature should review current statutory law regarding the Emergency Management, Preparedness, and Assistance Trust Fund surcharge on residential and commercial insurance policies under s. 252.372, F.S.*

Natural Disaster Policy at the Federal Level

- *The Legislature should request that FEMA include the State of Florida in its Recovery Division Policy Number 9523.13 entitled, "Debris Removal from Private Property," dated September 7, 2005. This inclusion should be retroactive to the 2004 storms. Furthermore, the request should ask for a reimbursement of interest to local governments who financed removal of debris from private property in 2004. In addition, the Florida Congressional Delegation should be contacted about supporting this issue.*

- *State and local policy makers, along with emergency preparedness officials, should continue to monitor the progress of bills in Congress and funding that directly affect natural disaster events and specifically FEMA, its organizational structure and reimbursement processes. Communication with the Florida Congressional Delegation should be utilized to show support for proposed legislation that would aid state and local officials with emergency management activities.*

Nursing Homes and Assisted Living Facilities

- *The Legislature should require state agencies to perform a needs assessment with regard to staff and resources necessary to more effectively enforce existing laws regarding emergency planning for nursing homes and assisted living facilities.*

- *The Legislature should encourage state and local entities, public and private, to be sensitive to, and plan accordingly for, legislative or programmatic changes in health care programs, prescription drug rules and related matters that become effective during the hurricane season.*

Sheltering, Special Needs and Volunteers

- *The Legislature should encourage all emergency shelters, whether operated by the American Red Cross or local governments, to designate a chain of command consistent with the requirements in NIMS for shelter volunteers at each of the shelters so that there is a clearly identified leadership role at shelters in Florida.*

- *The Legislature should encourage the Red Cross and other shelter operators to develop a relationship with the Florida Department of Law Enforcement to institute methods of screening and the Florida Department of Highway Safety and Motor Vehicles to provide credentialing for volunteers.*

- *The Legislature should amend s. 252.355(2), F.S., to require electric utilities to communicate to their special needs customers about the availability of registration services on a monthly, rather than annual, basis. At a minimum, notice should be required each of the six months preceding the onset of hurricane season.*

Public/Private Coordination

- *The Legislature should encourage local governments to include all vital agencies controlling infrastructure within their county, whether public or private, to participate in the activities at the local emergency operations center.*

Schools

- *The Legislature should require the LCIR, in cooperation with the Florida School Board Association, to develop cost estimates associated with the protection and temporary storage of vital records, supplies and equipment contained within each school during a hurricane event. The LCIR will report these cost estimates to the Governor, President of the Senate and the Speaker of the House of Representatives by October 1, 2006.*

- *The Legislature should encourage all Florida school districts to add "Hurricane Days" to their annual school calendars.*

Housing

- *The Legislature should reconsider fully funding the programs proposed by the Hurricane Housing Task Force.*

- *The Legislature should explore whether condominium association rules prohibiting pets, emergency vehicles and temporary residents under the age restriction of the particular community could be suspended during a declared State of Emergency.*

- *Upon evaluation by the Legislature of the low interest loan program established under s. 215.59 (3), F.S. 2005, for retrofitting homes and manufactured housing to strengthen them against hurricane damage, the program should be revised, expanded and funded, if appropriate.*

- *The Legislature should clarify in law the designation of local governments as the authority to permit and inspect structural changes or rebuilding of manufactured housing and mobile homes.*

Contractors and Post-Disaster Repairs

- *The Legislature should direct the Department of Business and Professional Regulation to establish a single toll-free telephone number for people to verify contractors' licenses and complaint history.*

Fuel

- *The Legislature should encourage policy makers not to implement gas tax holidays during hurricane season.*

- *The Legislature should explore whether fuel could be staged similar to water and ice.*

- *The Legislature should continue to encourage fuel wholesalers to maintain increased inventories during hurricane season.*

Evacuation Plans

- *The Legislature should require all local governments, as a part of their Comprehensive Emergency Management Plan, to have a specific procedure in place to evacuate those in impoverished communities not having the means to evacuate prior to a disaster related event when they live in a flood or surge prone area or in substandard housing that may not stand up against the storm. A public education program should be initiated informing the public of pick-up points in their communities and items that can and cannot be brought along with them when evacuating. The Division of Emergency Management should require local governments, along with regional and state responders, to test these evacuation plans to ensure that they are functional.*

I. Introduction

In 2004, Florida was directly impacted by four land falling hurricanes, an event not seen in the United States since 1886 in Texas.

Hurricane Charley made landfall on August 13th, Frances on September 5th, Ivan on September 15th and Jeanne September 25th. The overall effects on the state were widespread and significant. They included the following impacts for each storm:

Name	Counties Affected	Total Damages	Residents Evacuated	Residents w/o Power
Charley	25	$ 14 billion	2.7 million	1.2 million
Frances	57	$10 billion	1.8 million	3.28 million
Ivan	27	$20 billion	545,000	443,000
Jeanne	57	$12 billion	4.4 million	3.5 million

Other overall statewide effects included:

- Insurance claims exceeding 2 million claims (700,000 were filed in 1992 for Hurricane Andrew).
- To date approximately $56 billion in insured and uninsured damage has been attributed to these four land falling hurricanes in Florida.

The LCIR surveyed local governments' emergency managers to identify specific areas that they believed worked most effectively during last year's storms and how deficiencies could be remedied. LCIR staff received 44 survey responses from county governments representing a response rate of 66% of those county governments surveyed. In addition, 62 surveys were returned from municipal governments representing a response rate of 15%. Many municipal governments did not return their surveys, but called or indicated via letter that their reason for not completing the survey was that emergency management was handled at the county level. The survey responses played a very important part in assisting staff in conducting this review. It should be noted that not all survey respondents answered each question in the survey. Therefore, the number of responses to a particular question may be lower than the total number of respondents.

The repercussions and lessons from each of these storms and those that followed in 2005 have continued to mount with each passing storm. What is becoming more apparent is that local and state governments must take into account particular features of their specific populations, land areas, and all other circumstances that may be unique to the state and local areas and identify possible implications of these features.

These storms stretched the resources of federal, state and local officials to their limits. How all levels of government respond and coordinate with one another during unprecedented events like these is a constantly evolving process. This process requires thorough review and evaluation because each disaster brings a different set of challenges to the emergency management community.

II. Division of Emergency Management

Chapter 252, F.S., authorizes the creation of the Division of Emergency Management (DEM) within the Department of Community Affairs (DCA). DCA is designated to serve as the state's emergency management agency. DEM's powers and responsibilities are set forth primarily in s. 252.35, F.S.

Counties must establish and maintain an emergency management department. In addition, they must develop a Comprehensive Emergency Management Plan (CEMP) consistent with the state comprehensive emergency plan and program.[1] Municipal emergency management programs are encouraged, but not required by law. If created, these programs should be coordinated with their respective county emergency management department and their plans and practices should also be consistent and subject to the county plan. These programs at the municipal level must comply with all laws, rules and requirements applicable to county emergency management agencies.[2]

In the event of a natural disaster emergency situation, local governments can waive the procedures and formalities typically required by law pertaining to:

- Performance of public work and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community;
- Contracting and incurring obligations;
- Employment of permanent and temporary workers;
- Use of volunteer workers;
- Acquisition and distribution, with or without compensation, of supplies, materials and facilities; and
- Appropriation and expenditure of public funds.[3]

Local governments have the same authority as state agencies to issue orders and rules as necessary for emergency management purposes, provided they are not inconsistent with an order issued at the state level.[4]

A. Survey Results

Due to the unprecedented events of the 2004 hurricane season, local and state emergency managers were forced to make constant adjustments to many situations they had never had to face before. Typically, once a storm passes, the community goes into a recovery mode. However, in many instances local governments went from a response mode immediately back into a mode of preparing for another storm. This was especially true at the state level for DEM.

In the LCIR survey, local emergency managers were asked to list what they felt were the top three areas *within their own organization* they felt needed improvement from the lessons learned during the 2004 hurricane season. The most common areas ripe for improvement were:

- All aspects of special needs sheltering;
- Evacuation order notification;
- Emergency Operations Center (EOC) staffing;
- EOC security;
- EOC facilities;
- Pet friendly shelter needs;
- Training;
- Volunteer management;
- Wireless communication systems;
- County/City coordination;
- Debris management policies;
- Situation reports;
- Public notification;
- Damage assessment capability; and
- Identification of staging areas.

The survey also asked local emergency managers to give three areas of performance from *their dealings with DEM* that needed to be improved. Some of the most common responses included:

- Coordination with county EOCs;
- Tracker system;
- Conference calls and the scheduling of the calls;
- Coordination of mutual aid;
- More after-action meetings;
- Supply distribution pre-staging;
- Coordination with state agencies;
- Long term recovery procedures;
- Additional staff at the state level; and
- Better identification of the state versus local roles.

Overall, local officials have been complimentary of DEM's response and their availability to meet the needs of the local emergency management officials. DEM has made their staff available at many conferences and events to deal directly with local officials to identify the best solutions to improve coordinating responses for future disasters.

B. Emergency Management, Preparedness, and Assistance Trust Fund

The Emergency Management, Preparedness, and Assistance Trust Fund (EMPA) was created within Ch. 252, F.S. in 1993.[5] The EMPA, administered by DCA, provides that an annual surcharge of $2 per residential insurance policy be imposed on every homeowner's, mobile home owner's, tenant homeowner's and condominium unit owner's policy and that an annual $4 surcharge be imposed on all commercial fire, commercial multiple peril and business owner's property insurance, issued or renewed after May 1, 1993.[6]

Funds from the EMPA are to be allocated by DCA for the following purposes:[7]

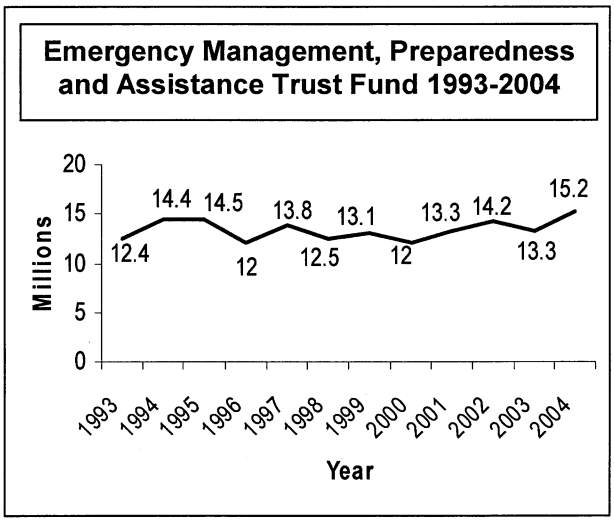
- To implement and administer state and local emergency management programs, including administration, training, and operations;
- To provide for grants and loans to state or regional agencies, local governments, and private organizations to implement projects that will further state and local emergency management objectives; and
- To meet any matching requirements imposed as a condition of receiving federal disaster relief assistance.

DCA can allocate funds to a local emergency management agency and program based on certain rules that include, but are not limited to:[8]

- Requiring that, at a minimum, a local emergency management agency either:
  - Has a program director who works at least 40 hours a week in that capacity; or
  - If the county has fewer than 75,000 population or is party to an interjurisdictional emergency management agreement entered into pursuant to s. 252.38(3)(b), F.S., that is recognized by the Governor by executive order or rule, has an emergency management coordinator who works at least 20 hours a week in that capacity.
- Specifying a formula that establishes a base grant allocation and weighted factors for funds to be allocated over the base grant amount.
- Specifying match requirements.

- Preferential funding to provide incentives to counties and municipalities to participate in mutual aid agreements.
- If adequate funds are available as determined by the division, every county shall receive funds at least sufficient to fund a dedicated, full-time emergency preparedness officer position.

Between 1993 and 2004, the funds distributed by the EMPA were relatively flat as represented in the table below.[9]



Source: Florida Department of Revenue [10]

The lack of consistent growth in the EMPA raised the question why the fund's growth does not mirror the massive growth in population and development in the state since 1993. In a letter dated July 18, 2005 to Senator Michael Bennett, Dr. Jim Zingale, Executive Director of the Florida Department of Revenue (DOR), outlined several factors as to why the fund has not grown substantially since its inception. His letter indicates that not every new house or commercial property built represents a new residential or commercial insurance policy. Dr. Zingale also outlined several factors affecting the growth rate of commercial and residential insurance policies, including:[11]

- Out-of-state policies covering Florida property;
- Uninsured parcels;
- Consolidation of multiple policies into a single policy;
- Destruction of commercial and residential improvements; and
- Rezoning.

To ensure insurance companies are collecting the trust fund surcharge, DOR conducts audits on companies that write property and casualty insurance in the State of Florida. In conducting these audits auditors request to see the amount of premiums and policy counts for policies subject to the surcharge.

The auditor verifies that the remitted surcharges match the reported number of policies. The auditor verifies the amount of premiums per policy. The auditor looks for three items:

- First, does the remitted surcharge money match the reported number of policies?
- Second, is the amount of premiums per policy credible/reasonable?
- Third, are the amounts consistent across years?

The above tests will generally uncover any policy count underreporting, if it has occurred.

Auditors with DOR also require the companies to maintain policies in force (PIF) records. These records detail the new, renewed, and cancelled policies. Auditors check for the remittance of surcharge monies in full on cancelled policies, because even though premiums may be remitted partially for a policy that is cancelled mid-year, the policy surcharge must be paid in full. The auditor will also assist the company in establishing the documentation necessary to track this information in the future. DOR auditors report that documentation improves markedly after a first audit.

DOR's insurance premium tax auditors cover between 70% and 90% of the reported surcharges.[12]

In response to the lack of growth in the trust fund, the Florida Emergency Preparedness Association (FEPA) is recommending as one of its legislative priorities for the 2006 Regular Legislative Session that the EMPA fees on residential and commercial be increased to $4 and $8, respectively. However, FEPA has also indicated a willingness to explore alternative methods so the payment of these funds is distributed equally among all citizens and commercial entities in Florida.

To maintain the state of readiness necessary for coping with natural disasters, it is incumbent that funds collected through the EMPA reflect the growth of Florida's population and the corresponding residential and commercial development that emergency managers must provide aid to and protect.

Policy Option 1:

The Legislature should review current statutory law regarding the Emergency Management, Preparedness, and Assistance Trust Fund surcharge on residential and commercial insurance policies under s. 252.372, F.S. The review would seek to do the following:

- Determine whether collection of the surcharge through insurance policies is the best method to ensure all residential and commercial properties are paying the fee into the trust fund. If needed, identify possible alternative methods of collection for the surcharge that might increase the funds collected to adequately capture the growth of residential and commercial properties in the state.
- Ascertain if an increase in the trust fund surcharge is warranted and the reasons for such an increase.
- Consider how funds can be used to finance specific local emergency management projects and functions.
- Evaluate whether language should be added to the law that exempts funds used to cover identified capital improvement projects from the fixed capital outlay appropriation reversion process provided within s. 216.301, F.S.

III. Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA), a part of the Emergency Preparedness and Response Directorate of the Department of Homeland Security (DHS),[13] has the responsibility of supporting state and local governments as well as the citizens within the affected areas when a disaster occurs.[14] FEMA's mission is to lead the effort to prepare the nation for all hazards and effectively manage federal response and recovery efforts following any national incident.[15]

A. Disaster Assistance

Disaster assistance provided by FEMA is divided into three categories as detailed below.[16]

i. Individual Assistance

Individual assistance aids individuals and households and may include cash grants up to $26,200 per individual household. This includes housing assistance and other needs assistance which covers medical, transportation and other disaster related costs. Other possible forms of individual assistance include:

- Low-interest loans;
- Veterans benefits;
- Tax refunds;
- Excise tax relief;
- Unemployment benefits; and
- Free legal counseling.

ii. Public Assistance

The Public Assistance Grant Program aids certain state and local governments and certain nonprofit organizations in responding to disasters. The main focus of this type of assistance is to aid these entities in recovering from the impact of a natural disaster and to mitigate the impact from future disasters. In most instances, local governments will pay for eligible expenses and then be reimbursed by FEMA through DEM.

Traditionally, FEMA's Public Assistance Program provides funding to state and local governments for work including debris removal and pays for 75% of the work costs with local governments paying 12.5% and the state paying 12.5%[17] for a period of 60 days and based on need thereafter. This can be increased to 90% funding by FEMA, 5% by local governments and 5% by the state[18] whenever a disaster is so extraordinary that actual Federal obligations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), excluding FEMA administrative costs, meet certain qualifying thresholds. One hundred percent of the costs can be picked up by FEMA if warranted by the scope of the disaster for the first 72 hours following a storm.[19]

iii. Hazard Mitigation Assistance

The Hazard Mitigation Division of FEMA oversees all of FEMA's mitigation programs including the National Flood Insurance Program. These programs stress protection and prevention through the use of mitigation measures to lessen the impact disasters have on affected citizens. Project suggestions are submitted to DEM and as funds become available from FEMA for hazard mitigation they are distributed by DEM to local governments to fund these projects.

There are several different programs that FEMA offers that provide hazard mitigation assistance as part of the Stafford Act.[20] These include: Hazards Mitigation Grant Program (HMGP); Pre-Disaster Mitigation Program (PDM); and Flood Mitigation Assistance program. The HMGP and the PDM are administered in Florida by DEM. Each of these programs is provided to lessen the impact disasters have on people and property. FEMA states that "Hazard Mitigation involves keeping homes away from floodplains, engineering bridges to withstand earthquakes, and creating and enforcing effective building codes to protect property from hurricanes."[21]

B. Fraudulent Claims

Following the 2004 storms, there were widely reported incidents of fraudulent claims being made to FEMA for individual assistance. These included claims for

reimbursement of funeral expenses or repairs to homes in areas where the impact of the storm was minimal at best. Many groups took issue with claims being made for expenses that may have not been directly related to the natural disaster. While certain areas were declared in a State of Emergency by the Governor in anticipation of receiving the brunt of the storm, the track of the storm is unpredictable, so the area or a great part of the area eligible for assistance as a result of that declaration may have received little to no direct effects from the storm.

According to an internal review of the claims from the 2004 storms, FEMA found no evidence of "widespread fraud," but was actively pursuing investigations against fraudulent applications for aid.[22] However, Congressional investigators found that "inexperienced inspectors, savvy applicants and untimely operational changes led to overpayment and fraud in Miami-Dade County after Hurricane Frances."[23]

According to the U.S. Senate Committee on Homeland Security and Governmental Affairs, significant issues were found with a large part of the $31 million given by FEMA to residents in Miami-Dade County for damage allegedly caused by Hurricane Frances which made landfall over 100 miles north of the area. FEMA was also faulted by the Inspector General of the Department of Homeland Security for declaring Miami-Dade County a disaster area before a damage assessment was even done.[24]

In response to many of these claims, FEMA officials indicated that there is a fine line between "bringing speedy service to those who need it and ensuring that taxpayer dollars are not misused."[25] FEMA uses several methods to detect fraud, including:

- Automated system cross checks of information with other agencies and insurance companies to weed out duplicated applications;[26] and
- Field inspections to verify losses and damages.

FEMA indicates that any cases of fraud or misuse are referred for prosecution as federal offenses and can result in up to a 10 year prison term and/or up to $250,000 in fines.

As of November 2005, 14 individual assistance recipients in Miami-Dade County had been indicted and seven have pled guilty to fraud charges.

In some areas of Miami-Dade County, FEMA inspectors told the *South Florida Sun-Sentinel* that they "have been threatened and accosted in some areas by residents demanding government aid. Fearful of being attacked, some inspectors are too generous in their assessments of damage."[27] In addition after Hurricane Frances, applicants could call FEMA and claim home damage from the storm and receive rent for one month to live elsewhere, without any proof of damage to their home.[28]

However, information gathered by the *Miami-Herald* indicated that while the overall affects on Miami-Dade County were less than other counties further to its north and west, with the large number of residents, coupled with poorly built and substandard housing, legitimate claims to FEMA did arise. Miami-Dade was eligible for funds because they were affected by the storm; some residents in Miami-Dade were without power for a week and others had issues with their roofs leaking and destroying possessions within their homes.[29] While Miami-Dade residents received a larger dollar amount of hurricane relief funds than those in 57 other Florida counties, in the end the emergency funds went to a "much higher proportion of households in the harder-hit areas of the state."[30] In Miami-Dade, 20,668, or 2.6%, of the 776,774 households applied for emergency aid. After conducting inspections, FEMA declared 10,976 households or 1.4% eligible. The total payout through October 18th, 2004 to Miami-Dade was $24.7 million.[31] While in Palm Beach County more than 121,000, or one-fourth of the 474,175 households, applied for aid. FEMA declared 49,405, or 10 percent, of the households eligible and has already dispensed more than $90 million.[32]

While it appears fraud did occur and is being dealt with by FEMA, it is also important to note their were legitimate claims for aid in Miami-Dade County and factors other than looking into areas that receive a direct hit is important when considering eligibility for aid.

C. Distribution of Funds to Local Governments

In many cases following storms, funds promised to local governments have been slow in coming to pay for needed public assistance reimbursements for local agencies. This puts local governments that do not receive needed funds in a timely manner in the position of possibly having to seek loans or raise property tax rates to make up for the monetary shortfalls due to not receiving promised funds from FEMA.

Aid is not sent directly to the local governments; funds go to DCA, which then disperses the funds to local governments. FEMA indicates the holdups are due to the state, while DCA officials respond that they distribute the funds as soon as they are received.

The overall amount of time it takes to complete paperwork and the uncertainty of local officials of how to properly complete it is a major sticking point with local officials. They indicate that they are told one thing by one representative of FEMA and then given contradictory information by another representative from the same organization.

In the case of the City of Palm Bay, they have a full-time employee to deal strictly with FEMA and their results have been very positive. However, this is not typical of most local governments.

D. Debris Removal

One of the most contentious issues involving FEMA and the recovery process is whether FEMA reimburses local governments for debris removal from private roads as well as public roads.

During the 2004 recovery efforts in Florida, FEMA reimbursed for 100% for work including debris removal for the first 72 hours. After that it was paid at 90% by FEMA, 5% by local governments, and 5% by the state. Florida law requires that whenever the state accepts financial assistance from the federal government or its agencies under the public assistance program and such assistance is conditioned on a matching of funds that the state will pay the whole match for state agencies and ½ of the required match for local governments.[33] The match for local governments can be waived under extraordinary circumstances by the Governor.

Regarding debris removal from private property, several counties complained that they received mixed messages regarding reimbursement from FEMA. Some counties contended that FEMA indicated they would reimburse for debris removal on private roads. This led some counties, including Polk County, to clear public and private roads for safety reasons, expecting reimbursement. Polk County indicated they were specifically told they would be reimbursed for debris removal on private roads as long as they were not in gated communities. However, once the roads were clear, FEMA told Polk County they would not reimburse them for the private roads, which cost the county about $4 million. FEMA indicated they might reimburse for the private roads if Polk County demonstrated that it had removed the debris on private roads for health or safety reasons. However, exceptions by FEMA in this regard are rare. In November, 2005 Representative Adam Hasner wrote letters to the entire Florida Congressional Delegation asking for their help in having FEMA reimburse local governments for these expenses.

According to DEM, FEMA will remove storm related debris from private roads if the county has a contract that specifies that they or their designee will pick up storm related debris on these private roads. In other words, FEMA will not reimburse a local government for debris removal if the local government was never obligated itself to remove the debris. DEM staff noted that expanding debris removal to private property would increase the exposure of the state and could be construed as using tax dollars for non-public uses.

On September 19, 2005, FEMA released a statement regarding the streamlining of the debris removal process for private property *(Policy Number 9523.13, "Debris Removal from Private Property", September 7, 2005).* This policy change is designated specifically for Louisiana, Mississippi and Alabama for the debris removal process due to Hurricane Katrina. Specifically, FEMA will now reimburse local governments in those states for debris removal from public rights of way and from private property. State and local governments in the areas affected by Katrina must alert FEMA that "widespread debris" on private property has created a health and safety risk which requires the removal of the debris and they must specify the locations to be cleared. A letter to the Federal Coordinating Officer in the state and a form provided by FEMA must be completed.

Policy Option 2:

The Legislature should request that FEMA include the State of Florida in its Recovery Division Policy Number 9523.13 entitled, "Debris Removal from Private Property," dated September 7, 2005. This inclusion should be retroactive to the 2004 storms. Furthermore, the request should ask for a reimbursement of interest to local governments who financed removal of debris from private property in 2004. In addition, the Florida Congressional Delegation should be contacted about supporting this issue.

E. Survey Results

In the LCIR survey, emergency managers were asked to list the three top areas that they felt FEMA needed to improve based on their experiences from the 2004 storms. Their responses included:

- Consistency in application of debris policies;
- Adherence to timelines for project completion;
- Better information provided to the public regarding eligibility for individual assistance programs;
- More active enforcement of abuses within the individual assistance program;

- Consistency of information given by FEMA employees to local officials;
- More efficient supply delivery;
- Faster response times to aid victims;
- Better training of employees;
- Better coordination with local officials regarding temporary housing; and
- Equitable allocation of equipment.

The frequency and intensity of the 2004 storms created many logistical challenges never experienced during a response to a natural disaster. The majority of Florida's counties were affected by one or more of the four storms of 2004 within just over a month. All entities involved agreed that these events stretched all levels of government's resources to their limit. FEMA's response and coordination were lauded by some and criticized by others.

Policy Option 3:

State and local policy makers, along with emergency preparedness officials, should continue to monitor the progress of bills in Congress and funding that directly affect natural disaster events and specifically FEMA, its organizational structure and reimbursement processes. Communication with the Florida Congressional Delegation should be utilized to show support for proposed legislation that would aid state and local officials with emergency management activities.

IV. National Incident Management System and National Response Plan

A. National Incident Management System

The National Incident Management System (NIMS) is a management approach that unifies federal, state and local lines of government for incident response. NIMS is a process tool approved by the Department of Homeland Security. NIMS standardizes incident management processes, protocols and procedures that all responders will use to coordinate and conduct response actions. Standardized procedures will be a key component of the system among first responders. This process involving responding to and recovering from an incident will be much more effective since a "common language" and universal set of procedures will be used to respond. Many groups including the federal government, states, territories, cities, counties, townships, tribal officials, and first responders participated in the creation of NIMS.

Some of the key features outlined as part of the DHS fact sheet on NIMS are:[34]

- Incident Command System (ICS). NIMS establishes ICS as a standard incident management organization with five functional areas -- command, operations, planning, logistics, and finance/administration -- for management of all major incidents.
- Communications and Information Management. Standardized communications during an incident are essential and NIMS prescribes interoperable communications systems for both incident and information management. Responders and managers across all agencies and jurisdictions must have a common operating picture for a more efficient and effective incident response.
- Preparedness. Preparedness incorporates a range of measures, actions and processes accomplished before an incident happens. NIMS preparedness measures including planning, training, exercises, qualification and certification, equipment acquisition and certification, and publication management.
- Joint Information System (JIS). NIMS organizational measures enhance the public communication effort. The JIS provides the public with timely and accurate incident information and unified public messages.
- NIMS Integration Center (NIC). To ensure that NIMS remains an accurate and effective management tool, the NIC will be established by the Secretary of Homeland Security to assess proposed changes to NIMS, capture and evaluate lessons learned and employ best practices. The NIC will continue to use the collaborative process of federal, state, tribal, local, multi-discipline and private authorities to assess prospective changes and assure continuity and accuracy.

With responders at all levels using the same organizational structures, terminology, procedures, and systems, interoperability among jurisdictions and disciplines can be accomplished. Due to the federal government's desire for the nationwide adoption of NIMS, the DHS has directed that all federal preparedness assistance to states and local jurisdictions be directly linked to compliance with the requirements of NIMS. No later than October 1, 2005, all recipients of federal preparedness funds must adopt and use NIMS as a condition for the receipt of funding for preparedness assistance during the 2006 fiscal year.[35] This includes preparedness funds from all federal agencies, not just DHS. However, it is important to note that there is no specific tie between post disaster assistance funds and NIMS compliance.

Pursuant to discussion with DEM staff, Florida has adopted and is using NIMS and has incorporated it into

its statewide strategy. DEM staff pointed out that "NIMS is not tactics, not strategy, and not technology and should not be mistaken for experience."

B. National Response Plan

The National Response Plan (NRP) is the practical application of the process established under NIMS. When a situation rises to the level of an "incident of national significance," as defined under the NRP, the plan sets forth the mechanism for a coordinated federal response. Although the NRP places a specific emphasis on local response, the NRP recognizes that at a certain level of disaster, federal agencies under the jurisdiction of DHS will cooperate to support and supplement local response efforts. This plan should result in better coordinated intergovernmental reactions to major disasters.

V. Communications

Communication before, during and after any type of natural disaster is key to ensuring that all levels of government are adequately serving the needs of all communities affected. It is imperative that governmental agencies explore every possible avenue to communicate vital information to affected citizens. In turn, this will make it possible for the services these agencies provide to be more effective and beneficial to a larger cross section of the population affected by the natural disaster.

Communication among emergency management officials is vital to enable citizens to protect their lives and property. It is also important because, as was learned during the 2004 and 2005 hurricanes, even the most basic forms of communication can be cut off for extended periods of time following storms. This is due to the damage to critical infrastructure that supports phone lines, internet connections and other radio communication devices typically used by law enforcement, first responders and emergency managers.

A. Communicating with the Public

The LCIR survey inquired about what methods counties used to communicate with their citizens before, during or after a natural disaster. Four specific types of communication systems being used are: interactive community notifications systems, commonly known by the brand name Reverse 911® notification system; 2-1-1 information systems; the Emergency Alert System; and NOAA Weather Radio.

i. Interactive Community Notification Systems

An interactive community notification system distributes information, emergency or non-emergency, to a specified group of phone numbers. The most common version of this product and the most universally recognizable is the Reverse 911® notification system. Other similar versions are available as well. Many agree this is a very effective method to get important information to a large number of people in a short period of time with specific instructions and information pertinent to their geographic location. In the LCIR's survey, 59% of local emergency managers indicated their government had an interactive community notification system, while 41% did not.

While many view this as an effective communication solution for emergency related events, it is not without shortcomings. The databases that house these phone numbers are often purchased every six months to a year. This leaves new residents or those changing their phone number, for whatever reason, out of the information loop until an update is purchased. Another concern is that a system like this could be hijacked and used by a terrorist organization to cause large numbers of people to congregate in an area for a large scale terrorist attack.

ii. 2-1-1 Information Systems

Another method of communication before, during and after a disaster is the 2-1-1 Information System. 2-1-1 is an easy to remember telephone number that, where available, connects people with important community services and volunteer opportunities. Services offered through 2-1-1 vary from community to community and provide callers with information regarding every day needs in times of crisis. The implementation of 2-1-1 is being spearheaded by the United Way of America as well as comprehensive and specialized information referral agencies in states and local communities. United Way of America and the Alliance for Information and Referral Systems strongly support federal funding so that every American has access to this essential service.[36] Some communities have chosen to implement their own 2-1-1 systems without the aid of the United Way.

In the LCIR survey, 41% of local emergency managers indicated their community had a 2-1-1 communication system, while 59% did not.

The majority of those without 2-1-1 or interactive community notification systems are small rural counties that indicate it is cost prohibitive to procure such systems.

Bills have been filed for the 2006 Regular Legislative Session in both the House (HB 249) and Senate (SB 156) by Representative Ed Jennings and Senator Evelyn Lynn regarding the Florida 211 Network. The

bill would require the Florida 211 Network to provide services in each county and to coordinate services with county emergency management agencies during disasters. The legislation also includes an appropriation of $5 million.

iii. The Emergency Alert System[37]

President Harry Truman established CONELRAD (Control of Electromagnetic Radiation) in 1951. This was the first national alerting system. It required radio stations to broadcast only on certain frequencies during an emergency alert. The main purpose for this was to prevent an enemy from attacking by using transmissions from broadcast stations as a guide for their target. This system later became known as the "Emergency Broadcast System" (EBS). It was designed to give the President a method to address the American people if there was a national emergency. EBS gave the President access to thousands of broadcast stations to send these emergency messages. In 1963, President Kennedy allowed state and local level emergency management information to be transmitted using the system. Local emergency management personnel use the system to send local emergency management messages through broadcast stations, cable and wireless cable systems.

The Federal Communications Commission (FCC) replaced the EBS with the Emergency Alert System (EAS) in 1994 due to limitations with the EBS. The major difference between EBS and EAS is the method used to alert broadcast stations about an incoming message. National EAS alerts are mandatory for all providers, whereas state and local area EAS participation is currently voluntary.

State and local emergency management officials are given aid by FEMA in developing, implementing and maintaining the structure of their EAS. The National Weather Service (NWS) provides emergency weather information to alert the public of dangerous local weather conditions and other emergencies. State and local plans for the activation of the EAS are created by the State Emergency Communications Committees and Local Emergency Communications Committees, which are formed by government officials and representatives from the broadcast and cable industries.

The EAS structure also gives authorized state and local personnel with a quick method to distribute important local emergency information. For example, a state emergency manager may use the system to send out a public warning by broadcasting that warning from one or more major radio stations in a particular state. The system allows EAS equipment in other radio and television stations, as well as cable systems in that state, to automatically monitor and rebroadcast that message.

The primary goal of the FCC in using the EAS system is that it be able to disseminate emergency information quickly to the affected citizenry.

iv. NOAA Weather Radio[38]

National Oceanic & Atmospheric Administration (NOAA) Weather Radio is a nationwide network of radio stations operated by local National Weather Service offices. The state provides continuous broadcasts that include current weather warnings, forecasts, and conditions and is considered the best method to receive severe weather warnings.

When forecasters issue warnings for a tornado, severe thunderstorm, or flash flood, a special receiver sounds a tone which alerts people even if they are sleeping, outdoors, watching satellite TV, do not live near a warning siren, or the electricity is off. In addition, this tone alarm can also be used to notify people about other emergencies, such as hazardous materials spills or terrorist activities. NOAA weather radio also operates when there is no emergency weather situation and can be used as a basic aid to plan daily activities outside.

To tune into NOAA Weather Radio, a special receiver is needed. Any model purchased should have battery backup, tone alarm and seven channel features. In some areas, an external antenna may be necessary, depending on the construction of the building a person is in, their location inside the building, or if they are in an area with poor reception.

B. Satellite Phones[39]

Strong consideration needs to be given to alternative communication methods, such as satellite phones, due to the fact that while planning can address many contingencies, each disaster is different in its size and scope. All levels of government need to be able to communicate with one another and within their ranks.

Satellite phones are very different than cellular phones. In a satellite phone network, the phone handset device is communicating through satellites orbiting above the earth, which beam the signal down to ground receiving stations, also called land earth stations or LES, and connect to the telephone backbone, also called the Public Switched Telephone Network. This is done via sophisticated routing and switching methods. Satellite phones require an unobstructed view of the sky so satellites can communicate with the handsets. Many satellite phone companies offer phone handsets with omni directional antennas, where pointing of the

satellite phone antenna at a satellite is not required. The most common observation about satellite phones is the large antennas used. Satellite phones require a larger antenna than cellular phones in order to properly communicate with satellites orbiting above the earth. The whole process of making a call from the satellite handset to the signal being routed into the public switched telephone network takes roughly 1/10 of a second.

The National Guard, American Red Cross, utility workers, reporters, and people in search of relatives are among those obtaining satellite phones. Rates for satellite phones can run over $1 per minute.

Noted limitations with satellite phones include:

- The signal cuts in and out;
- Interference with NASA signals;
- Line of sight problems; and
- Short life of batteries without a recharge.

Despite such limitations, satellite phones have become more widely used during disasters.

VI. Assisting Citizens with Special Needs

A great deal of discussion has been generated as a result of recent storms regarding "special needs" populations. The Public Health Nursing Disaster Resource Guide offers its own definition of "special needs".[40] This definition is premised on certain medical factors being present, and instructs that sheltering is for the purpose of maintaining the individual's health status throughout the sheltering period. For purposes of disaster planning, response and recovery, however, this term may be somewhat inadequate. When acting beyond the sheltering context and moving towards communicating with the public about disaster planning, evacuations and other components of emergency management, emergency managers should perhaps begin to include other populations that do not fit into the traditional definition. The Department of Health (DOH) reports that the Communications Subcommittee of the Special Needs Shelter Interagency Committee (Interagency Committee) created under s. 381.0303(5), F.S., is actively taking steps to broaden the communications net used by emergency managers to include these special populations. This committee is a collaboration of several state agencies that are required by law to participate, as well as other stakeholders. Although the committee was created several years ago, it had not met until early in 2005.

For example, it is important to be able to communicate with and plan for people whose needs are unique due to their impoverished status or lack of transportation. Residents with language barriers, deaf persons with little ability to use sign language, newcomers who may have cultural tendencies that make them distrusting of governmental figures, or elders with dementia – all of these populations must be reached out to and considered when planning for emergencies.

At the National Hurricane Conference in New Orleans, Louisiana in March 2005, speakers urged the audience to include the disabled in planning efforts, particularly with regard to communicating with people who are deaf or blind. Citizens with service animals must be allowed to keep those animals with them at all times, and shelters must plan accordingly. Evacuation plans must take into account persons wheelchair bound or who cannot wait in a food line or get out of a cot. The National Council on Disability has issued a comprehensive analysis of the need to ensure that governmental entities include the disability community in emergency planning, especially regarding communication and access issues.[41]

Addressing the traditional special needs population, Florida is home to many elderly and other persons who need a continuous supply of electricity to operate oxygen concentrators (which are used at home as opposed to the mobile oxygen canisters), dialysis machines and other life sustaining equipment and to keep certain medications refrigerated. During or after a storm, when there is often no electricity, this population is at particular risk. Some advocates recommend that the state pay for generators for special needs patients and shelters to meet these needs, while others believe it is the responsibility of those providing care to this population. There is also some thought being given to prioritize reestablishing electricity and fuel to groups caring for special needs residents.

By law, home health agencies and hospices must have a CEMP that describes policies, procedures and other requirements that the entity will implement before, during and after a natural disaster. However, it has been widely reported that these requirements, while extensive, often are not enforced due to a lack of oversight by state agencies responsible for ensuring compliance. During the 2005 Regular Legislative Session, HB 1551 was filed addressing many issues relevant to special needs residents. The bill did not pass but would have established the Agency for Health Care Administration's (AHCA) authority to enforce various provisions in existing law. AHCA Secretary Levine has expressed his hope that a similar incarnation of that bill will pass this year.[42]

Despite HB 1551's failure to pass the Legislature last session, DOH has spearheaded an interagency

workgroup that is examining and implementing several policies or procedures contained in that bill that can be implemented without legislation, such as improving and making uniform shelter standards.[43] To that end, DEM and DOH have surveyed all special needs shelters as to their air conditioning capacity, applicable building codes, square footage per person, and other features.

The Interagency Committee also identified as a continuing problem the difficulty family members and health care providers had when trying to locate their relatives or clients who were at shelters. Shelter workers may have been under the impression that they were precluded under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) from sharing any information about the sheltered person.[44] No clear, comprehensive policy had previously been established giving guidance to shelter workers as to what information about shelter residents can be divulged, adding an unnecessary element of uncertainty during the storms. This scenario appears to have been addressed by the U.S. Department of Health and Human Services Office for Civil Rights. In a Bulletin dated September 2, 2005, the office stated that health care providers are authorized to share certain information "as necessary to identify, locate and notify family members, guardians or anyone else responsible for the individual's care. . . ." The agency also pointed out that the HIPAA Privacy Rule only applied to certain entities, and nothing in that rule prohibits the American Red Cross, for example, from sharing information regarding the sheltered person.

The Interagency Committee also found that many people will not register as special needs status, even though they should. The state could partner with American Association of Retired Persons (AARP) and health organizations to broaden exposure of its message. This committee is sharing information and proposals with various legislative committees.

AHCA is establishing a new system which will list shelters and the number of beds. The database should indicate if the facility is full, whether it has been evacuated and whether beds are available. However, experience from 2004's storms showed that once special needs persons left shelters, it was difficult to place them. Some could not return to their homes because of faulty/damaged housing, power or transportation issues. The Interagency Committee is proposing new discharge planning protocols to address this issue.

Of the 40 counties responding to the LCIR survey question asking what were the biggest challenges with regard to nursing homes, assisted living facilities (ALFs) and other residential facilities for persons with special needs, twenty stated that lack of power and/or air conditioning were most significant. Other problems included patient dumping, lack of staff, transportation issues and the failure by nursing homes and ALFs to carry through with their required CEMPs. Facilities that not only had emergency plans in place, but also engaged in regular inspections of their generators and conducted drills testing communication systems and evacuation plans, enjoyed better success rates regarding patient well-being.

Policy Option 4:

The Legislature should require state agencies to perform a needs assessment with regard to staff and resources necessary to more effectively enforce existing laws regarding emergency planning for nursing homes and assisted living facilities.

A. Medication

One of the many challenges present before, during and after a natural disaster is ensuring that citizens have adequate medical supplies. HMOs, private insurers and Medicaid have restrictions on how frequently refills can be obtained for prescription drugs. However, in times of natural disasters, both the Commissioner of the Office of Insurance Regulation and AHCA Secretary are authorized to take steps that allow those insured to fill their drug prescriptions regardless of how recently they had done so and also authorized payment to pharmacies for 30-day drug refills regardless of the date of the most recent refill. The Office of Insurance Regulation accomplishes this through an order.[45] At AHCA, Medicaid program staff can edit code in the statewide computer system that alerts participating pharmacists that prescriptions will be reimbursed even though they are filled prior to the normally appropriate date. Furthermore, pharmacists are permitted to exercise their discretion in either allowing an early refill prior to a code change (and submit paperwork for reimbursement later) or *not* complying with an early refill request if the pharmacist believes that narcotics will be inappropriately used.

As for dispensing medication during or after a storm, 14 of 41 county respondents stated their county health department took responsibility for the supply and dispensing of medication and that otherwise, no problems arose.

B. Mental Health

Information regarding how persons with mental health issues coped with the storms was difficult to collect. Very few counties reported specific difficulties faced by those residents with mental or behavioral problems.

Florida has been successful in pulling down grants from the federal government to assist the Florida Department of Children and Families (DCF) in meeting the needs of citizens still traumatized by last year's storms. In particular, the funds will be used to treat the elderly, immigrants, farm workers and people displaced by the storms. These funds will augment about $22 million in other federal funds that are used by the state under "Project Recovery." Funds are provided by the federal government under the Stafford Act.[46]

DCF developed a Disaster Behavioral Health All-Hazards Statewide Plan after last year's storms which strives to identify issues, roles and strategies when dealing with this particular population. Mental and behavioral health counseling is in most cases coordinated by DCF with private contract providers and other state and local partners, both public and private. Certain changes under the state Medicaid program regarding treatment and medication went into effect on July 1, 2004. It is unknown whether the implementation or effects of these changes were affected by the busy storm season.

Policy Option 5:

The Legislature should encourage state and local entities, public and private, to be sensitive to, and plan accordingly for changes in health care programs, prescription drug rules, and related matters that become effective during the hurricane season.

VII. Sheltering and Volunteers

During the 2004 hurricane season, an unprecedented number of people reportedly evacuated their homes and sought emergency shelter. Due to the immense number of persons requiring assistance and shelter, several issues related to sheltering during natural disaster received attention.

A. Shelter Deficit

The issue of where to house mass amounts of people safely during a natural disaster is a key issue facing counties as they develop procedures for sheltering Florida's residents during an emergency situation. Typically going to an emergency shelter is designed to be a desperate or last-minute effort for those persons who do not have the adequate transportation, finances or time required to evacuate during an impending storm.

The Department of Community Affairs released its 2004 Statewide Emergency Shelter Plan which states that 12 counties demonstrate public hurricane shelter space surpluses. Those counties are: Brevard, Broward, Escambia, Gilchrist, Indian River, Madison, Miami-Dade, Martin, Osceola, Seminole, Union and Washington. The remaining 55 counties range from Volusia with a deficit of 21,368 spaces to Wakulla with a deficit of 107 spaces. The report maintains that there was a shelter deficit of 592,650 spaces in 2004 which was reduced from 1,501,931 spaces in 2000. Equipped with this knowledge counties are faced with the task of organizing projects, applying for shelter retrofit dollars and locating buildings which meet state shelter criteria within their respective jurisdictions.

The 2005 Shelter Retrofit Report, also issued by DCA, recommends a total of 148 projects, costing $11,882,722.40. Funding these projects would create an additional 68,882 spaces. Estimates suggest that if the current level of shelter space creation continues then the state would eliminate its shelter space deficit by 2011.[47]

B. American Red Cross

The American Red Cross (Red Cross) has as its goal "nationwide disaster planning, preparedness, community disaster education, mitigation, and response that will provide the American people with quality services delivered in a uniform, consistent, and responsive manner." [48] In this capacity, the Red Cross is recognized across the country as the leader in shelter administration and provision during emergencies. The Red Cross has therefore established a set of requirements for buildings used as shelters during a natural disaster.

To illustrate the role the Red Cross plays in disaster response, it is estimated that during the 2004 hurricane season, the Red Cross:

- Opened 1,800 shelters and evacuation centers;
- Served 11 million meals and snacks;
- Started casework with more than 59,000 individuals affected; and
- Incurred approximately $92 million in costs for response efforts.[49]

The Red Cross relies heavily on the participation of volunteers. There is screening and training for volunteers that is assignment specific. Some of these assignment specific training programs include public affairs, setting up a shelter, developing family-service interviewing skills, helping local officials bolster their disaster response measures, in-kind donations and delivering quality community disaster education. This training, conducted by local chapters of the Red Cross, is free but not all volunteer positions require training. This became most apparent during the 2004 disaster relief effort when some items related to shelter operation became issues. Many of the survey respondents stated that they were disappointed with the

staffing situation at shelters and plan to train county and school board staff as shelter managers.[50] These respondents believe that there is need for a stronger leadership presence at shelters by the Red Cross.

The Red Cross issued a press release in January 2005, stating that it had been involved in the development of the NRP, which identifies authority and leadership responsibilities. However, when asked if the Red Cross volunteers who will be working as shelter managers are required to take NIMS courses, staff at the national headquarters was unable to provide a definitive answer.[51] All localities must achieve compliance with NIMS no later than September 2006. Therefore, the magnitude of changes that will be instituted within those shelters managed by the Red Cross remains to be seen.

Policy Option 6:

The Legislature should encourage all emergency shelters, whether operated by the Red Cross or local governments, to designate a chain of command consistent with the requirements in NIMS for shelter volunteers at each of the shelters so that there is a clearly identified leadership role at shelters in Florida.

Shelter safety was another obstacle which surfaced during the 2004 storms. Reportedly, some volunteers have been career criminals.[52] The emotional nature of disaster situations and the need to feel secure while in an emergency shelter make it extremely important that the Red Cross have a reliable way to screen for stable and trustworthy individuals.

The Florida Department of Law Enforcement (FDLE) currently has a Volunteer and Employee Criminal History System (VECHS) which was developed to check the background of persons who work or volunteer with children, the elderly, or the disabled under The National Child Protection Act[53] and s. 943.0542, F.S. This system is available to an organization (public or private) that provides some type of "care" or "care placement services", as defined in the above laws, to children, the elderly, or the disabled, even if only as a limited part of the entity's overall business. Once qualified to participate in the program, an entity may request criminal history information on all its current and prospective employees and volunteers. The cost to participate is $47 for each employee or $36 per volunteer.[54]

The Florida Department of Highway Safety and Motor Vehicles (DHSMV), in conjunction with FDLE, plans to implement an on-scene credentialing program in December 2005. DHSMV provides the cards at a cost of $1.57 per card. FDLE is obtaining its funding through a federal grant. The program will have a mobile unit to provide disaster responders with an identification card which would be valid for 180 days.[55] It would be beneficial for the Red Cross and those shelters without a law enforcement presence to develop a relationship with FDLE and DHSMV to provide background checks and credentialing for shelter volunteers.

Policy Option 7:

The Legislature should encourage the Red Cross and other shelter operators to develop a relationship with FDLE to institute methods of screening and FDHSMV to provide credentialing for volunteers.

C. Presence of Law Enforcement at Shelter Sites

Due to emotions running high at shelters, safety measures sometimes must be taken. These can include establishing a separate area for families with older relatives or young children. Other issues that shelter administrators experienced while sheltering citizens during an emergency situation include how to handle sheltering sex offenders and petty theft. Several counties now provide for a law enforcement presence at the shelters during emergencies.

The City of Boynton Beach in its *Hurricane Season 2004 After Action Report* recommended the following:

- A special area within a designated shelter should be assigned to Police personnel and their families;
- Define and designate who is authorized to be in this area and post an officer to enforce the designation;
- Sleeping bags or military cots should be purchased and maintained for police personnel to use only in emergency situations; and
- Meals ready to eat could be purchased and stored for police consumption during disasters.

These recommendations could serve to relieve some of the stress and fear experienced by shelter clients. Moreover, several counties have entered into mutual aid agreements with their sheriff and others to render aid as the need arises. These agreements may be expanded to include assistance at shelters during natural disasters.

D. Sexual Offender/Predator Shelter Issues

Some counties were also faced with sex offenders/predators seeking shelter during the storms and were unsure of how to proceed. The Florida Department of Corrections (DOC), reported to LCIR staff that they have adopted Procedure 110.005, which requires state supervised sex offenders to provide an

alternate address which will be reviewed for approval. If the alternate address is not approved and the offender chooses to evacuate his/her approved residence, the offender will be instructed to report to a designated sex offender shelter. If there is no local sex offender shelter designated by the sheriff, the correctional probation officer will instruct the offender to report to a DOC facility which has been designated as a hurricane evacuation shelter.[56]

This procedure is to become effective when an executive order is issued declaring a State of Emergency and a supplemental order issued from the state coordinating officer. DOC has deferred sheltering decisions regarding sex offenders/predators who are not on state probation to local law enforcement officials.

In lieu of designating a sexual offender/predator shelter, Marion County has adopted a policy that allows offenders/predators to shelter inside the county jail. During an emergency situation, one of the barracks is cleared out and a sex offender/predator may bring his/her family to the county jail to shelter until danger passes. This is same procedure used for the officers and their families during an emergency.[57]

Identical bills have been filed for the 2006 Regular Legislative Session in both the House (HB 249) and Senate (SB 156) by Representative John Legg and Senator Charlie Clary relating to the sheltering of sexual offenders/predators. The proposed legislation would prohibit sheltering of sexual offenders and designated sexual predators in public hurricane evacuation shelters.

E. Availability of Portable Toilets at Shelters

It became apparent that some of Florida's emergency shelter population also had to endure unsanitary restroom facilities that were rendered useless due to the lack of electricity. Therefore, portable toilets at shelter sites have become another issue which must be addressed during emergencies. Additionally, during the aftermath of the storms, some counties experienced several days without electricity for pump stations coupled with flooding and the contamination of natural wells.

Through its Pre-Positioned Disaster Supplies (PPDS) Program[58] FEMA provided emergency supply kits which contained several items including emergency meals and portable toilets that were shipped out to various affected areas. Moreover, according to DEM, the Health and Medical Services Emergency Support Function[59] deployed 1,645 portable toilets to areas across the state at a cost of $2,608,527.[60] However, some areas of Florida did not receive any of these provisions and were left with inadequate lavatory facilities during power outages and overflow situations.

Some cities, like DeBary, addressed this issue by providing portable toilets to areas of the city where septic tanks were underwater. It would be beneficial for counties to purchase and store indoor portable toilets to provide to emergency shelters during natural disasters. This expense is reimbursable under FEMA's, Category B protective measures of the Public Assistance Program.

F. Special Needs Shelters

i. Special Needs Registry

Florida law requires that each local emergency management department in the state maintain a registry of persons within their jurisdiction who have been designated special needs.[61] To facilitate the development of the listing, electric utilities are required to notify those residents of the registration program on an annual basis.

Before the 2004 hurricane season approximately 55,000 persons were on the registry; however, it is estimated that during the storms 6,000 clients took refuge within special needs shelters. The difference between these numbers suggests there are several problems with current registry procedures, such as: 1) several eligible persons were not aware of the registry and therefore did not register; 2) many of those who register did not actually choose to go to the special needs shelter during the storms; and 3) the lists are typically not updated.[62] Although it is a priority of DOH and other agencies to increase the number of residents who register with the special needs registry, doing so does not guarantee a person a slot at a special needs shelter. Some areas of the state have adequate special needs shelter space, but others do not.[63]

Policy Option 8:

The Legislature should amend s. 252.355(2), F.S., to require electric utilities to communicate to their customers of special needs registration services on a monthly, rather than annual, basis. At a minimum, notice should be required each of the six months preceding the onset of hurricane season.

ii. Special Needs Designation

DOH has three general and twelve specific criteria for special needs shelter eligibility.[64] They are as follows:

General Criteria

- People with minor health/medical conditions that require professional observation, assessment and maintenance;
- People with contagious health conditions who require assistance and activities of daily living but do not require hospitalization; or
- People with the need for medications and/or vital sign monitoring and are unable to do so without professional assistance.

Specific Criteria

- Daily or more frequent dressing changes;
- Daily or more frequent monitoring of vital signs;
- Daily assessment of an unstable condition (e.g., diabetes);
- Assistance with management of an ostomy; continuous peritoneal dialysis, indwelling catheter;
- A health care professional to administer medication by injection;
- Aid with the activities of daily living because of restricted mobility;
- Administration of frequent doses of intense medications for terminal illness;
- Professional assistance in the use of hi-tech or mechanized medical equipment;
- Dependence on electrically energized equipment to sustain life;
- Oxygen dependence;
- Custodial care; or
- Is in the 3rd trimester of pregnancy.

Some counties experienced problems because their special needs shelters had to turn away several people who were not registered or did not meet the special needs criteria. Brevard County suggests that the state pass legislation to require hospitals and county emergency management agencies to enter into mutual agreements to assist these persons.[65]

Other problems with special needs shelters include inadequate quantities of linens, pillows, blankets, or food to accommodate the populations along with those instances of shelters which had inoperable generators or none at all. DOH has demonstrated a commitment to confront these challenges with a list of 17 recommendations to improve the processes of special needs shelters.[66]

DCA has recommended 90 shelter retrofit projects for generator or generator pre-wire at an estimated cost of $11,597,595. Additionally, it is possible that funds appropriated to other state agencies may have been used to purchase generators for shelters or pump stations.

As mentioned in the previous section, DOH, as well as AHCA, is leading efforts to ensure safe disaster relief shelters for special needs clients through the Interagency Committee. Other duties of the committee will be to develop and negotiate policies, memorandums of understanding, and agreements which support best practice sheltering throughout the state.[67] Through these collaborations of agencies and other interested parties, it is expected that solutions to these and other problems will be implemented to improve the processes and experiences of those Floridians who choose to take refuge at Special Needs Shelters during future hurricanes.

G. Pets in Sheltering Facilities

Although the Red Cross oversees the majority of emergency shelters for the human population, it does not govern the sheltering provisions for animals due to the potential health risks involved. This proved problematic for several counties and cities directly impacted by the 2004 storms. Many residents were reluctant or refused to go to designated evacuation shelters because they did not want to leave their pet(s) at home alone.

While many people may choose to house their pet in a boarding shelter or vet's office during a storm, the Floridapets.net Pet-Friendly Shelter Guide[68] suggests that because it is sometimes difficult to immediately recover a pet after an emergency evacuation, persons with pets should first go to the home of a pet-friendly relative or friend that lives outside the evacuation area. The next best place to go is a pet-friendly hotel or motel that is not in the evacuation area. However, many of Florida's elderly do not have the transportation or financial means to leave the area or to stay in a hotel during the emergency. Therefore, a viable alternative to pet owners staying in their homes which have been determined dangerous during hurricane winds would be to relocate to a county operated pet-friendly shelter.

Monroe County Administrators, along with representatives from the Monroe County School District, Red Cross and Animal Center provided a workable solution to the special needs pet sheltering dilemma which earned the county a National Association of Counties (NACO) 2005 Achievement Award. This solution afforded those special needs clients the opportunity to seek shelter in an area only a few feet from their pets. Marion County also has achieved this for residents who do not require special needs sheltering.

Additionally, Alachua County has developed some procedures for pet sheltering, including housing pets in the science wing of schools because this wing typically does not have carpet. The county recently designated Kanapaha Middle School as the first pet-friendly shelter, with other schools on stand-by to handle any overflow. During the 2004 storms the middle school sheltered 54 pets and their owners during Hurricane Frances and 94 during Hurricane Jeanne.[69]

Currently, 48 of Florida's counties do not have plans for pet-friendly shelters. Although several counties have hotels that will accept small pets for a fee, some small counties do not even have this option available.[70]

In response to Hurricane Katrina, Congressmen Tom Lantos (D-California), Christopher Shays (R-Connecticut) and Barney Frank (D-Massachusetts) are sponsoring legislation requiring that state and local disaster preparedness plans include provisions for household pets and service animals in order for state and local governments to qualify for FEMA funding. However, the Humane Society of the United States still believes that uniform protocols on sheltering and rescuing animals should be formulated at the federal level.[71]

VIII. Public/Private Coordination

Public/private coordination efforts have proven to be beneficial for communities involved in these partnerships. Florida decided to take advantage of these benefits of teamwork in 1997 with the introduction of the "Florida Prepares" initiative which gave emphasis to the "development of partnerships among local emergency management programs, community based organizations, and the private sector for the purpose of developing plans for a community to mitigate, prepare for, respond to, and recover from a natural disaster."[72] It was also hoped that these community-based partnerships would expand and develop strategies and initiatives such as mutual aid agreements that would foster and increase interest in taking personal responsibility to protect and respond to disasters at the neighborhood level.

A. Strategies

Each community should have a strategy for business preparedness, risk reduction and recovery as a product of collaboration between the business community, local government and the Community's Emergency Response Teams. The benefits a business may receive from implementing such a strategy would include reduction of long-term loss and vulnerability to natural and man-made disasters and improved coordination with the public sector.

The coordination of the public and private entities of a community that has been struck by a natural disaster becomes extremely important as that community begins the long and tedious road to recovery. This coordination is required on all levels and covers a variety of issues including financial contributions as well as services and personnel. Examples of how well this coordination worked include:

- Small businesses in Port Charlotte received federal assistance from the Small Business Administration, FEMA and the Global Partnership of Preparedness;[73] and
- Citizens of Port Charlotte were able to make phone calls in a tent set up by Verizon Wireless The first day it was operational, more than 2,000 people used the site.[74]

Moreover, the local hotel industry was instrumental in donating towels, soap, shampoo, toothpaste, and toothbrushes. Coordination with the hotel industry is essential for areas struck by natural disaster because hotels also act as temporary shelters for tourist and or first responders.

It is also particularly important for public utilities to coordinate with the local EOC to provide assessments of critical needs and restoration of electricity as well as water and sewer capacities. For example, Lee County commented that having a representative from Florida Power & Light at the EOC was a well coordinated action.

Several Floridians also experienced the benefits provided by the coordination and mutual aid agreements between public utilities, public utilities organizations, [i.e., Florida Municipal Electrical Association (FMEA)] and private utilities (i.e., Florida Power & Light) which served to expedite the return of electrical power to residents across Florida.[75] These efforts have been beneficial to both utilities and governmental entities around the state in that they have allowed local governments to enter into agreements with both governmental and non-governmental associations. DEM reports that private-public cooperation has been improving with each storm, particularly regarding interaction between local governments and utilities.

Policy Option 9:

The Legislature should encourage local governments to include all vital agencies controlling infrastructure within their county, whether public or private, to participate in the activities at the local emergency operations center. This will improve post disaster communication and coordination in restoring vital infrastructure services to areas of critical need first.

B. Mutual Aid Agreements

Local governments are authorized by statute to enter into mutual aid agreements with other jurisdictions within the state for reciprocal aid and assistance.[76] Copies of these agreements must be submitted to DEM which can then coordinate assistance between local governments during an emergency. It also supersedes other local mutual aid agreements between governmental units during catastrophic disasters. This agreement governs the conduct of both requesting parties and assisting parties and may also be applicable between participating governmental units in the absence of existing local mutual aid agreements.[77]

Several Mutual Aid Agreements have also been signed as a result of the 2004 Hurricanes. Examples include the City of Winter Park that signed a Mutual Aid Agreement with FMEA, which will give Winter Park access to 32 other municipal electric utilities crews from Florida and over 2,000 crews nationwide to assist with future power outages.[78]

FEMA expanded the national mutual aid policy to allow local governments to be eligible for mutual aid reimbursement even if a mutual aid agreement was not in place before a disaster declaration. This means that entities that did not have an agreement already set up with their neighbor before a disaster occurred, can request that FEMA reimburse them for eligible costs. Additionally, FEMA funds the Emergency Management Assistance Compact (a $2 million grant over a three-year period), which establishes parameters for recipient states to reimburse assisting states. In Florida, requesting and responding state responsibilities are governed under s. 252.924, F.S.

IX. Schools

Schools encompass many important community needs: learning and research centers; entertainment venues; and refuge against natural disasters. Schools are used as primary shelters during natural disasters in most Florida counties. The construction and building requirements for schools were recently reviewed and enhanced. These changes to the 2004 Florida Building Code, as authorized under Ch. 553, F.S., took effect on October 1, 2005.[79]

Several phases of natural disaster preparedness are employed with regard to schools. The first phase, mitigation and prevention, addresses what schools can do to reduce the risk to life and property. The second phase, preparedness, deals with the process of planning, training, and practicing for the worst case scenarios. The response phase focuses on what steps are taken during the actual disaster. Although it is difficult to prepare for every situation, close attention to details during phases one and two will inevitably lead to success during the response phase. Finally, if disaster does strike, the recovery phase tends to be the most expensive phase in contending with a natural disaster. The effects of the loss of educational resources and facilities are felt throughout a community long after the homes and businesses have been restored. Therefore, funding for the mitigation of shelter facilities in general and schools specifically is a concern for all emergency management teams.

A. Use of Schools as Shelters

Most Florida counties designate schools as the primary facilities to house emergency evacuees during hurricane seasons. In 2004, several of Florida's schools were used as either regular or special needs shelters. Of the 44 counties that responded to the LCIR survey, only Franklin, Jackson and Monroe counties stated they did not use schools as shelters during 2004. This being the case, it is important that schools be prepared to implement the newest building construction requirements for schools.[80]

LCIR survey respondents stated that 291 of the 349 shelters, or 83%, that were opened in their counties, were schools. The 2004 Statewide Emergency Shelter Plan Report echoes this with an estimate that 93% of hurricane shelters statewide are schools. This high percentage of use as emergency shelters results in several costs for the schools.

First, schools cannot be re-opened unless and until all shelter evacuees have been relocated. In cases where the schools have been used as special needs shelters, it has been especially difficult for some counties to relocate the evacuees. Churches and other community entities were able to assist by lodging those individuals who had been displaced due to the storms in other counties.

Second, schools have to be cleaned and classrooms restored before normal classroom operations can resume. Typically, schools are the only facilities available which have been built to withstand hurricanes and that can shelter the masses of people who may need emergency shelter in a community. Also, volunteer shelter personnel do not typically bring

supplies, so school supplies such as markers and paper for signage as well as kitchen or food supplies will often be used to aid shelter clients. With this in mind, the Florida School Board Association favors the state providing extra funding for those schools that serve as emergency shelters.

B. Temporary Storage for Asset Recovery

Additional problems that schools used as shelters typically face include petty theft and damage to computers and other equipment caused by exposure to the elements. In some cases, petty thieves have stolen supplies or possessions and sometimes these items must be replaced before a teacher can effectively conduct classes. As stated previously, the presence of 24 hour law enforcement at shelter sites helps to eliminate the vast majority of security issues. However, small items which can be easily hidden tend to be more difficult for even on-duty officers to secure.

Also, if a school is damaged during a storm, items such as computer equipment or vital school records which are exposed for long periods of time to heat or moisture are typically destroyed. A simple solution to these problems is the use of temporary storage for those items. Therefore, many emergency management officials recommended that each classroom have, at a minimum, a locking cabinet where supplies and other items may be kept during those times when the school is used as an emergency shelter.

Moreover, if the school district also employs a procedure to cover with tarps or relocate computer equipment and filing cabinets which contain student information, then many times items properly secured can be salvaged and used again. The Charlotte County School Board recommended this type of storage option in a presentation to LCIR members in January 2005.[81] However, no information was available to LCIR Staff concerning the estimated cost in implementing asset protection and storage.

Policy Option 10:

The Legislature should require the LCIR, in cooperation with the Florida School Board Association, to develop cost estimates associated with the protection and temporary storage of vital records, supplies and equipment contained within each school during a hurricane event. The LCIR will report these cost estimates to the Governor, President of the Senate and the Speaker of the House of Representatives by October 1, 2006.

C. Potential Loss of Students and Funding Loss

The majority of Florida's educational funding programs are based on the number of students attending or the Full-Time Equivalent (FTE). In order for a school to remain at the same level of funding, it strives to retain or increase the number of students it serves from year to year. For this reason, several schools throughout those counties affected most by the 2004 hurricane season have been concerned about future funding levels.

For example, Escambia School District officials are facing a significant drop in student enrollment. It is thought that the reason for this decline of 658 students from August 2004 to August 2005 could stem from families displaced by Hurricanes Ivan and Dennis. This drop in enrollment could foreshadow teacher layoffs and a reduction by as much as $1.15 million in state funding.[82]

To aid with this issue, the Florida School Board Association suggests legislation that "holds districts harmless from the loss of FTE students and adequately compensates districts for FTE students increase due to hurricane related student transfers."[83] Nevertheless, rates of FTE growth and decline generally vary across the state for several different reasons, and it is difficult to determine how long a district's recovery stage will last. Therefore, it is possible that management of these fluctuations during recovery periods should be done through the Governor's emergency authority, supplemental appropriations, or proviso.

D. Loss of In-Service or Teacher Work Days

Because a vast majority of the schools were used as shelters and sustained damage during the high winds and rain, many days of school were missed and had to be recaptured. Although 86% of counties responding to the LCIR survey commented that make up days did not pose a problem for them, other school districts have indicated that this is a huge problem.

School districts have used various means to make up these lost days such as in-service days, holidays and split-sessions. However, the use of in-service days creates a problem for teachers who would normally use these days to complete progress reports or other student analysis, as well as lesson plans.

Additionally, the districts find that shortening holidays such as Christmas or Spring Break to make up missed days is unpopular, possibly because students and their parents typically plan travel around these times. School districts have also used double or split-sessions which establish two separate schedules in a school with one-half of the student population assigned to an early or later session, either by grade level (i.e., grades 9 and 10 early, 11 and 12 later) or lottery with hardship exceptions, or possibly, by sub-attendance zones. This

option concerns working parents because children who are not old enough to work are not supervised for part of the day.[84]

One way school districts can combat the loss of in-service days and decrease the confusion and anxiety caused by using holiday breaks or split-sessions to makeup days missed during storms is to follow Lee County's example and add "Hurricane Days" to the school schedule.[85] The three "Hurricane Days" which are scheduled annually as part of their school calendar appear to work well for them, although the unprecedented storms of 2004 required more than 3 days for those counties hit by more than one storm. This strategy would be sufficient during a typical storm season.

Policy Option 11:

The Legislature should encourage all Florida school districts to add "Hurricane Days" to their annual school calendars.

E. Funds to Harden Schools Used as Shelters – Hazard Mitigation

The population growth trends in Florida have resulted in the creation of more schools. These new schools are constructed under more stringent building code requirements so they do not require hardening funds but some older schools that are still being used as shelters and that can benefit from retrofitting to modern standards will require funding to be effective shelters during natural disasters.

The Florida Legislature has taken action to address these issues both pre and post disaster. A pre-disaster action relates to the improvements to Florida's Public Shelter Design Criteria which can be found in the Florida Building Code.[86] There are several requirements for public shelters, including size, site, structural loads, protection of windows, doors and toilets, ventilation and electrical requirements. A post-disaster action includes the appropriation of $3,904,188 in state funds to nine school districts for hurricane recovery during the 2005-2006 fiscal year.[87]

X. Hospitals

During a natural disaster, hospitals are vital in providing services and assistance to the patients of the state. Hospitals were heavily affected during the 2004 storms and they face many challenges in preparation for future events.

In looking at the effects on Florida hospitals during the series of storms in 2004:[88]

- 98 hospitals were damaged with $67.4 million in damages;
- 8 hospitals were closed;
- 41 hospitals lost electrical power;
- 9 hospitals lost water supply;
- 27 hospitals housed 527 special needs patients;
- 15 hospitals housed 130 nursing home patients;
- 13 hospitals were evacuated;
- 624 patients were evacuated; and
- Hospitals incurred $1.1 million in costs due to uninsured hurricane patients.

In the Florida Hospital Association's (FHA) May 2005 publication entitled, *Eye of the Storm: Impact of the 2004 Hurricane Season on Florida,* hospitals were asked to provide information and a cost estimate for hardening their facilities and preparing for future hurricanes. Surveys from 93 hospitals were returned. The average cost for the future facility hardening was determined to be $1,051,000 per hospital.[89] When looking into impacts on hospitals during a natural disaster, one of the most important areas to consider is patient care. One of the most dramatic impacts affecting patient care is if a hospital must be closed down or evacuated due to a disaster. The placement of this displaced patient population is very problematic and an issue that must be planned for as much as possible.

It is important to also consider the patient care costs associated with the 2004 hurricanes that impacted hospitals. Based on FHA's survey, the patient care costs directly associated with the 2004 storms were $56 million.[90] These costs included patient transfers, care to uninsured patients, care to pregnant women, ancillary services provided by Disaster Medical Assistance Teams, lost revenues due to cancelled surgeries, admissions and visits, and serving as a special needs shelter.[91]

Communications were a major problem for hospitals during the 2004 hurricanes. The loss of telephones and cell phone use coupled with the need for a direct link to other hospitals, the county's EOC, Emergency Medical Services (EMS), and fire/rescue hindered hospitals greatly. The FHA report strongly indicates the need for hospitals to build "communication redundancies"[92] if traditional communication means fail during these disaster situations. In addition, planning and communication among these entities prior to a disaster will assist with the continuation of operations should normal modes of communication fail.

XI. Recovery Personnel

Volunteers and recovery personnel who come to the aid of suffering locals are very important to those areas which have sustained damage during a natural disaster. They bring with them the manual labor and solidarity needed to help rebuild and sustain a community after a disaster. Although these people are invaluable during adversities of this type, some natural disaster officials speculate that these persons are not only providing greatly needed assistance, but are also straining the resources, such as provisions and lodging, which are greatly limited.

A. Accommodations and Food for Recovery Personnel

One thought is that recovery personnel should be self sufficient because the resources of a population that has been stricken by a disaster have already been strained. Lee County stated the belief in their survey response that:

> *It is unfair to ask an impacted county to act as a "good host" to outside assistance. This takes away already scarce or compromised resources from persons in need and adds to the workload of personnel responding to the event. Outside assistance should be self-contained and self-sufficient as much as possible.* [93]

Eight (18%) of responding counties commented that recovery personnel should be self-sufficient; 62% replied that they do not provide accommodations or provisions to recovery personnel. Many stated that recovery personnel are provided food and shelter through the Red Cross along with the victims. Furthermore, several religious and community organizations provide food, accommodations and other needed supplies during emergency situations.

The Statewide Mutual Aid Agreement (SMAA) requires that for major disasters, the local government providing assistance shall to the fullest extent practical give its personnel and other resources sufficient equipment and supplies to make them self-sufficient for food, shelter and operations. The SMAA requires that for minor disasters, the requesting parties specify if they want only self-sufficient responding teams.[94]

The State is capable of deploying several teams to aid in recovery efforts. These include: State Emergency Response Team (SERT), Rapid Response Teams (RRTs) and CERTs.

SERT, which is a collaboration of Florida's state agencies, private not-for-profits, trade associations and utilities, led by the state's coordinating officer, sends a team of responders to assess the situation and begin the recovery process. As a result of the 2004 storms, SERT has proposed that Emergency Responder Base Camps be established to fulfill the needs of responders from government and non-profit agencies.[95]

RRTs can consist of individuals, organized groups, or ad hoc groups of local emergency management professionals. In the event of a disaster, RRTs can quickly deploy to provide temporary assistance to impacted state, county or municipal emergency operations. CERTs consist of a local or neighborhood group that receives special training to enhance their ability to recognize, respond to and recover from a major emergency or disaster situation.

SERT, CERTs and RRTs are self-sufficient regardless of whether they are responding to a major or minor disaster. Since it may be difficult for teams to assess the margin between major and minor disasters at the onset of response, a representative from Palm Beach County suggests that the SMAA require that all responding teams, whether mutual aid or volunteer, be self-sufficient for a minimum of 72 hours.[96]

B. Clearly Defined Roles for Recovery Personnel

The roles of recovery personnel encompass a wide range of functions. It is difficult to determine what is needed until the disaster has occurred and priorities can be set. Therefore, emergency management recovery personnel should have training in specific hazard situations where expertise in the removal of debris or even the recovery of human remains may be required. However, many emergency management officials feel that it is more beneficial to have broad classifications of support needed, with descriptions of the possible responsibilities being limited to such information as "working in a logistics area" or "working in an Emergency Operations Center."[97]

C. Staffing Relief Assistance

Several state and non-profit agencies coordinate and deploy emergency response personnel. Therefore, local governments must organize their efforts and pre-planning to make sure that there is adequate staff available to provide relief and schedule alternating personnel for all aspects of the disaster relief and recovery process. This can be done in part by adopting procedures for CERT staff.

XII. Post Disaster Issues

A. Housing

Housing stock was decimated in many areas throughout the state, including manufactured and site built housing for owners, renters and migrant workers. Lower income residents were hit the hardest. Comprehensive assessments of the damage remain

somewhat elusive, in part, because different entities consider different criteria when determining whether a dwelling is damaged. For example, the Red Cross had initially estimated that the four storms caused damage to more than 300,000 homes – 25,000 of them completely destroyed and more than 46,000 sustaining major damage, rendering the dwelling uninhabitable without repairs.[98] Using claim files as the starting point for its assessment, FEMA reports that more than 700,000 homes were affected by the storms. Other residents reported damage to their homes directly to their insurance companies, thereby not falling within the purview of the Red Cross or FEMA's tallies.

Renters have reported significant difficulties in finding housing.[99] Areas where housing was heavily damaged by the storms have experienced rents doubling or more in the last year. FEMA has determined that it will decrease rental assistance from two month increments to one and will require additional documentation that renting during repairs is in fact necessary.[100]

In response to the devastation suffered by homeowners, renters and transients alike, Florida Governor Jeb Bush established the Hurricane Housing Work Group through an Executive Order.[101] The Governor directed that the group, led by Lt. Governor Toni Jennings, address a comprehensive list of post-disaster housing issues. When the work group issued its report in February 2005 the authors acknowledged the lack of data available on which to premise their findings. Nonetheless, the work group offered several recommendations, primarily suggesting carving out hundreds of millions of dollars for various recovery programs. These programs would focus on affordable housing, rental housing and farm worker housing, through grants, tax credits and technical assistance.

Some of the recommendations were taken up under HB 1889 and SB 202. However, only $250 million of the $354.4 million proposed by the work group was funded by the Legislature. The Legislature did not address the other recommendations made by the Work Group, which included programs that would address housing needs of farmworkers and renters (the latter program was partially funded) and would provide funding for home repairs for certain vulnerable residents, such as the elderly, homeless families and the disabled.

Policy Option 12:

The Legislature should reconsider fully funding the programs proposed by the Hurricane Housing Task Force (approximately $100 million).

The LCIR survey asked counties to state the three biggest challenges they experienced regarding housing and the storms. The responses were basic in nature. First, there was a general lack of places for residents to relocate to, including hotels, rentals, structurally sound buildings, or places suitable for persons with special needs. Some structures, while physically sound, remain uninhabitable because of mold and mildew. Second, many counties opined that FEMA did not provide an adequate number of temporary housing units. Third, problems with contractors and repairs were significant in several counties.

B. Operation Blue Roof

News reports indicated that according to information provided by FEMA and the U.S. Corps of Engineers (Corps), about 143,000 blue roofs (tarps) were installed by the government in the aftermath of the four storms through "Operation Blue Roof", with damage from Hurricane Ivan accounting for almost 47,000 of those tarps. In June 2005, almost 31,000 dwellings in Escambia County alone still had blue tarps on their roofs.

The 2004 storms came in rapid succession, as have the storms of 2005. Supplies and qualified manpower are inadequate to fix the damage caused by the storms. After the 2004 storms, Operation Blue Roof was scrutinized and several shortcomings came to the fore. First, FEMA had an inadequate number of tarps available. Clearly, the program was overwhelmed due to the sheer scope of the damage done throughout the state. Second, too few contractors were hired to complete the installation. Furthermore, there was growing concern about the fact that government contractors were paid $1.75 per square foot of tarp to cover damaged roofs although the cost of a new fiberglass shingle roof would be between $1.65 and $2.40 per square foot.[102] Due to a confluence of factors, installation was costly. First, many contractors were essentially commuting to the sites more time than they were actually working. Second, there was tremendous competition for laborers. Finally, some unscrupulous contractors did engage in price-gouging.

Some residents complained that the tarps shredded within a couple of months or were installed incorrectly and caused leaks in their homes. This is probably due to the fact that as the inventory of heavy mill tarps dwindled, FEMA supplied contractors with single-ply tarps; these were not as sturdy as desired. As each successive storm hit Florida, and subsequently neighboring states, it became apparent that FEMA would need to stockpile tarps, rather than solely relying on vendors to be able to provide adequate supplies upon demand.

After Hurricane Dennis, DEM chose to secure tarps from FEMA but to use volunteers to install them rather than contractors hired by the Corps. This resulted in getting the tarps on the damaged roofs quicker than in previous storms. Should a succession of storms hit, or should a higher number of installations be necessary, this option may not be desirable. For the aftermath of Dennis, however, it is reported to have worked well. In sum, Operation Blue Roof worked well for some homeowners, less well for others.

C. Condominiums

Condominium owners have reported a litany of issues somewhat unique to them. For example, many condominium associations have passed by-laws requiring owners to install hurricane shutters. It is within an association's statutory authority to require unit owners to purchase shutters or, if they fail to do so, to purchase them on the unit owner's behalf and then charge the unit owner for the cost.[103] The cost of shutters can run into the thousands of dollars.

Other association residents complain of association rules prohibiting certain types of vehicles from parking on site or strict enforcement of rules that allow only people 55 years old or over to reside in the complex. These rules impede law enforcement officers or pick-up truck drivers from keeping their service vehicle on the premises of the condominium. And, people whose parents live in age restricted communities have found themselves unwelcome on the property, even though they are simply assisting their parents or other elderly people. Some neighborhood associations even prohibited residents from taking in evacuees from the hurricanes, although these prohibitions were subsequently overruled by the residents.[104]

Policy Option 13:

The Legislature should explore whether condominium association rules prohibiting pets, emergency vehicles and temporary residents under the age restriction of the particular community could be suspended during a declared State of Emergency.

During the 2005 Regular Legislative Session, SB 1486 was enacted authorizing DCA to establish a pilot project in one or more counties whereby low interest loans were to be made available to assist homeowners and owners of manufactured housing to retrofit their homes and strengthen them against hurricane damage or loss.[105] DCA is required to give the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of both houses a full report and evaluation of the program January 1st of each year.

Policy Option 14:

Upon evaluation by the Legislature of the low interest loan program for retrofitting homes and manufactured housing to strengthen them against hurricane damage, the program should be revised, expanded and funded, if appropriate.

D. Manufactured Homes

The U.S. Department of Housing and Urban Development (HUD) implemented certain construction and safety standards for manufactured homes. The standards became effective in 1976. After Hurricane Andrew, building standards, particularly pertaining to wind resistance, were amended in 1994. The federal law preempts state law and therefore, manufactured housing is exempt from the purview of the Florida Building Code.[106] Florida law pertaining to manufactured housing is primarily limited to installation, tie-down requirements and licensing.[107]

Somewhere between one and two million Florida residents reside in manufactured housing, either permanently or seasonally, including migrant workers. For many, manufactured housing offers the only viable opportunity for residents to secure affordable housing. Almost 30% of Florida's manufactured housing stock does not conform to the 1976 standards, and less than 15% conforms to the post-1994 standards. Consequently, older manufactured homes have fared very poorly during hurricanes, leaving many Floridians homeless or reliant on equally poor housing options. As discussed in the previous section, legislation was passed during the 2005 Regular Session that authorized DCA to establish a low interest loan program to assist manufactured homeowners with retrofitting their homes and making improvements to strengthen them against future hurricane damage or loss.[108]

For those homes built to 1994 and post-1994 standards, however, the vast majority withstood last year's storms with virtually no structural damage.[109] Nonetheless, some safety experts maintain that when faced with a major storm, residents living in manufactured housing should not stay in those houses, regardless of the unit's age.[110] Additionally, the age of the unit is only one of several variables to consider when assessing the safety of the unit. Similar to site houses, whether the manufactured house is located in a low lying area is critical, as is whether the unit has add-on structures. Taking all of these factors together, state and local emergency managers may want to take into consideration the variables surrounding the individual units or manufactured housing parks when formulating their evacuation procedures.[111]

Based on the results of post-hurricane damage assessments, it is clear that much of the state's manufactured housing stock needs to be repaired, retrofitted or replaced. If repairs are to be made, federal law requires repairs to be made in a manner consistent with federal standards and requires the same use of materials and design as the original construction. However, because many manufactured homes are so old, many of the manufacturers are no longer in business, thus making it difficult to determine to what the original use of materials and design were. Despite these obstacles, 49 counties currently issue permits and perform inspections for repair work.[112] This disparity between counties that do inspect and permit and those that do not, leaves somewhat of a vacuum when it comes to ensuring uniform standards and procedures are followed.

Policy Option 15:

The Legislature should clarify in law the designation of local governments as the authority to permit and inspect structural changes or rebuilding of manufactured housing and mobile homes.

E. Building Code and Licensure

In addition to a shortage of housing, the hurricanes showed the state how critical a quality building code is, as well as having rules in place to regulate how the work is performed. After each major storm, DCA sends out a Building Code Assessment Triage Team to evaluate the success of building code requirements and make recommendations if additional changes to the code are warranted.

In an effort to expedite home repairs, Governor Bush exercised his authority several times during the 2004 and 2005 storms by issuing Executive Orders. Executive Order 04-188, signed August 25, 2004, allowed Floridians already holding certain contracting licenses to perform roofing repairs, but only in certain counties. This order was expanded to allow registered contractors (who would otherwise be limited to performing repairs only in the jurisdiction in which they are registered) to perform roofing and re-roofing repairs.[113] These orders were further expanded and extended to authorize cities and counties to issue temporary licenses to out-of-state contractors meeting certain criteria to perform roofing and re-roofing repairs.[114] DBPR was in contact with local governments and maintained a list of individuals who received temporary licenses. DBPR has indicated that no problems regarding these individuals were reported to them. However, there are remedies available to pursue and penalties to impose against licensed contractors who breach their responsibilities, as well as individuals who engage in unlicensed activities. With so many repairs needed, and such a limited workforce, some homeowners either pulled permits themselves, or resorted to not pulling permits and hiring unlicensed individuals, clearly a risky endeavor.[115]

Overall, the response to the state's expansion of the pool of legally authorized contractors was positive. Most local contractors were backed up with jobs and many homeowners who procured a contractor and needed repairs had no idea of when those repairs would begin. Local contractors indicated pros and cons to letting out-of-state contractors work locally, but for the most part, they agreed there was plenty of work to go around.[116] Some residents have complained, however, that it is nearly impossible to remedy a situation where an out-of-state contractor has not fulfilled his or her contractual duties and leaves the state.

Even with the issuance of the Executive Orders mentioned above, contractors still must comply with Florida's licensing laws, as well as have the proper training, worker's compensation and insurance. License information and complaint history with regard to individual contractors can currently be checked at DBPR's website or by making a toll call to Tallahassee.[117] DBPR points out that residents who call DCA's toll-free number (Florida Emergency Information Line) can get "patched into" DBPR's Tallahassee phone bank, thus avoiding a toll charge. However, this method of reaching DBPR is not advertised in any way by the agency. For many seniors and others without computer access after a storm, a toll-free phone number would be useful to access this information.

Policy Option 16:

The Legislature should direct DBPR to establish a single toll-free telephone number for people to verify contractors' licenses and complaint history.

F. Fuel

The price of gasoline continues to rise quite steadily, yet oftentimes more abruptly and steeply in the wake of a storm. Florida's fuel is shipped in to the state, mainly from refineries in Texas, Mississippi and Alabama. If ships and barges are prohibited from traveling in advance of inclement weather, fuel supplies will likely run short. Other factors, such as holidays, events in OPEC nations, gas tax breaks and increases in wholesale prices can add to high demand, short supply and rapidly increasing prices. As opposed to years past, oil companies maintain smaller reserves, so that if prices decrease, wholesalers will not have high reserves of low profit fuel. Conversely, if prices increase, wholesalers will be in a position to ship more expensive fuel.[118]

For example, Hurricane Frances coincided with the gas tax holiday enacted by the Florida Legislature in 2004.[119] There is speculation that gasoline station owners had depleted their stores of gas in order to avoid pumping gas that was not subject to the tax. Another perspective on the shortage is that demand for gas during the tax holiday period was so high that stations could not maintain adequate fuel supplies. This year, Dennis hit the Panhandle just a few days after the July 4th weekend, when many Floridians and visitors traveled by car on holiday, and fuel supplies were low.

Policy Option 17:

The Legislature should encourage policy makers not to implement gas tax holidays that occur during hurricane season.

Federal law requires certain counties to receive and maintain two grades of unleaded gasoline in order to sell gas that meets certain fuel emissions standards.[120] After hurricanes, the U.S. Environmental Protection Agency will generally waive those requirements, thus freeing up more fuel.

Shortages of gas prior to a storm are often exacerbated once the storm makes landfall if gas stations have no electrical power with which to operate their pumps. People hoarding gasoline or excessive evacuations also contribute to gas shortages. With Floridians buying more than 300,000 generators this year, it is likely that there may be more stockpiling of fuel for the generators, thus forcing more scrambling for already short fuel supplies. A proposal adopted by the Legislature last session would have appropriated $3,000,000 to DCA for the purchase of generators for "emergency fuel supply" that would then be disbursed to gas stations and some smaller nursing homes. However, the Governor vetoed that appropriation.

Governor Bush has stated that at some future point the state may want to consider building a petroleum pipeline as a means of decreasing the state's reliance on ships and trucks to move fuel to and through the state. Additionally, the Governor continues to work with petroleum wholesalers and retailers in an effort to establish staging points for fuel, similar to those for water and ice, to ensure adequate gas supplies throughout the state. DEM is already looking into establishing a fuel staging process for emergency responders.

Policy Option 18:

The Legislature should explore whether fuel could be staged similar to water and ice.

Increasing their reserves at bulk terminals is another option the state would like the petroleum industry to embrace voluntarily. Although the Governor has stressed the need of prioritizing the restoration of electric power to gas stations so pumps will function, no specific executive or legislation action has yet been mentioned to further that goal.

Policy Option 19:

The Legislature should continue to encourage fuel wholesalers to maintain increased inventories during hurricane season.

Although the variables mentioned above affect the supply and demand of gas, prices are not supposed to increase unless the retailer incurs additional costs. Yet, after each storm, reports appear in the media about gas stations price gouging customers. The Office of the Attorney General (OAG) reports that of 1,900 complaints made to its Hotline after Dennis, 90% had to do with gasoline price gouging. The OAG has determined that the vast majority of gasoline price hikes were legitimate and that retailers had to pay higher prices for the gasoline, which they passed on to the consumer. In fact, just hours before the Governor declared a State of Emergency in advance of Dennis's arrival, oil companies hiked prices up considerably, thus commencing the domino effect of higher prices paid by retailers and customers.

Nineteen survey respondents reported problems with fuel availability, while twenty-one counties reported little or no disruption in the gas flow. Two counties had plans in place to ensure gas supplies for government vehicles, whereas one county said it could not pump fuel for government vehicles because it had no electrical power and no generator.

G. Price Gouging

Nearly 9,000 claims alleging price gouging were made by residents to the Office of the Attorney General (OAG) during the 2004 calendar year. In calendar year 2005 (prior to Hurricane Wilma), more than 3,000 claims were made. The OAG maintains records of these complaints and assigns them to one of approximately 80 categories, including fuel, housing and roofing activities. It appears that as the storms progressed in 2005, price gouging complaints about gas continue to decrease, relative to the overall number of complaints. Of the complaints generated by last year's storms, the OAG investigated and prosecuted several dozen individuals and business entities. This resulted in about $500,000 collected in fines and penalties or consumer restitution.

Price gouging laws were enacted shortly after Hurricane Andrew in 1992.[121] Chapter 501, F.S., and many municipal ordinances prohibit price gouging. The penalties are not particularly severe and standards for determining whether price gouging has occurred are somewhat vague and subjective. Despite these apparent deficiencies in existing state law, not one county responding to the LCIR survey reported price gouging as a major problem. (This anomaly could be due to the fact that complaints were made either directly to the OAG's hotline or to local law enforcement officials rather than county officials.) Yet, when asked what, if anything, the state could do to further address the problem, responses were basically uniform in recommending more strenuous enforcement and higher penalties.

H. Looting

The OAG found a significant increase in burglaries in several counties affected by 2004's hurricanes. Accordingly, the Legislature responded to the public's call to punish looters more severely by passing HB 207, which sought to increase penalties for particular burglaries and thefts that are committed during a declared State of Emergency. However, the Governor vetoed this bill as being overbroad.

I. Changes in Land Use and Environmental Factors

The storm season wreaked havoc on many areas of sensitive ecological value around the state, including preserves, gardens and Lake Okeechobee.

The series of storms churned Lake Okeechobee's waters, causing the muck at the bottom to swirl into upper layers of the water. With no sunlight reaching the lake's plant life, the fish die. Steps are being taken by the U.S. Army Corps of Engineers to release some of the water, with the hope that the lake can renew itself, although this approach is not universally supported. Debate on how best to protect the lake continues.

Beach erosion caused by storms is another ecological problem. Replenishment efforts already underway right after the storms of 2004 were largely undone by Dennis's storm surges. DCA wants to compress the time within which beach replenishment activities will be completed. Despite state action, some communities want to "scrape" up sand that still makes up the beach area up to reinforce or replenish the dunes. This approach is somewhat controversial in that it could lead to further erosion of the beach and presents hazards to nesting turtle populations.

Last year's storms obliterated around 30% of the state's orange crop and almost 65% of the grapefruit crop for the season that ran from October 2004 through June 2005. Grapefruit production was the lowest it has been since the 1935-36 season. The southern area of the state suffered the smallest decrease in citrus production while the Indian River district suffered the highest decrease – 76% in total citrus production.[122] Devastation to the state's citrus crop came as a mixed blessing to some growers. The ruin drove prices up. Thus, for those growers who suffered little or no damage, they were able to sell their crops at a considerably higher profit than they had anticipated. However, growers whose crops were damaged could take little solace in higher prices as there was little product to sell. Additionally, the heavy winds from hurricanes are believed to have caused or contributed to the spread of citrus canker to many counties previously unscathed by those bacteria.

As for whether the devastation caused by the storms would convince counties to change their land use laws, 27 counties responding to the LCIR survey said no changes were envisioned. Only eight counties indicated that they are contemplating changes to county ordinances. These changes include limiting building on the beach, enacting coastal rural land use regulations, changing their flood zone maps, and reevaluating subdivision zoning.

Subsequent to the LCIR survey results being compiled, Governor Bush issued an Executive Order creating the Coastal High Hazard Study Committee.[123] This committee, staffed by DCA, will examine several aspects of balancing commerce, the public good, the environment and other factors. The committee will gather input from various state and federal agencies and submit a report with findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives by February 1, 2006.

J. Liability Issues

The issue of liability of medical professionals and other volunteers during emergencies surfaced at LCIR committee meetings and through media reports. A perception existed that medical professionals were reticent to volunteer their services out of fear of being sued. However, several sources of protection already exist to insulate medical personnel from such liability.

In 1997, the federal Volunteer Protection Act was enacted by Congress.[124] This law essentially provides immunity from liability to an individual who volunteers for certain non-profit organizations. The law only protects the person from claims of negligence and not more serious claims. Also, the law only protects noncompensated volunteers. There has been

some philosophical debate concerning the value and fairness of the law, but it is unknown whether the law has inspired anyone, not already inclined, to volunteer his or her services.

Also at the federal level is a request by the National Association of Community Health Centers (NACHC) asking Michael Leavitt, the Secretary of the U.S. Department of Health and Human Services, to issue a policy stating that protections offered under the Federal Tort Claims Act apply to physicians who offer emergency care in a state other than the one in which they are licensed. As of September 12, 2005, no additional ruling has been handed down by Secretary Leavitt.

Florida, like many other states, has a Good Samaritan Act.[125] This act provides immunity from civil liability to a person who provides care, treatment or service without compensation during an emergency. Although this law was originally intended to protect only medical professionals, the law was expanded in 2004 to cover any person who "participates in emergency response activities under the direction of or in connection with a community emergency response team, local emergency management agencies, DEM, or FEMA.[126]

The Good Samaritan Act is somewhat limited in its value in that it provides a defendant an affirmative defense. The defendant still is at risk of going through the rigors of a lawsuit. In order to address the concern voiced by medical professionals, the DOH suggests that medical personnel align themselves with it and serve as volunteers under Ch. 110, F.S., thereby enjoying, for liability purposes, the same statutory protections as DOH employees. DOH does not confer sovereign immunity on volunteers, nor does it administer the process through which doctors and nurses volunteer their services. DOH is primarily responsible for doctor discipline.

To date, there is not one comprehensive law that provides medical personnel with absolute immunity. Rather, there is a patchwork of protections, which, to some, is preferable to removing all responsibility from doctors and nurses for their actions during an emergency. Finally, based on input from staff at the House of Representatives and DOH, the lack of liability protections has not appeared to prevent health care professionals from offering their services during emergencies.

XIII. Evacuation Issues

In light of the many issues brought forward by the destruction caused by Hurricane Katrina and the inability of those without the means to evacuate, a review of local CEMPs in Florida is warranted.

For example, in Hillsborough County residents living in the south part without the means or ability to leave are told to flag down a passing school bus if they wish to evacuate. While there are some procedures for registering these individuals who may number in the tens of thousands, it appears that a great number have no idea how they could evacuate. In addition, the City of Tampa has a bus system running 10 evacuation routes, which planners acknowledge is not enough, and has done a poor job in advertising the evacuation routes.[127]

Specific plans and ongoing public education programs need to be instituted to avoid many of the problems experienced during Hurricane Katrina in New Orleans. These plans also must be tested to make sure they are viable in the event that they must be put into action. Ongoing public education programs must be instituted in these communities so that people know what to do when the time to evacuate comes.

Policy Option 20:

The Legislature should require all local governments, as a part of their CEMP, to have a specific procedure in place to evacuate those in impoverished communities not having the means to evacuate prior to a disaster related event when they live in a flood or surge prone area or in substandard housing that may not stand up against the storm. A public education program should be instituted informing the public of pick-up points in their community and items that can and cannot be brought along with them when evacuating. DEM should require local governments, along with regional and state responders, to test these evacuation plans to ensure that they are functional.

XIV. Best Practices Submitted in LCIR Survey Responses

In the LCIR survey, Emergency Managers were asked to provide any best practices involving their county. The following is a sample of the responses submitted:

A. Broward County

Mutual aid was coordinated at the county EOC level and worked properly. An emphasis should be put on using this protocol as established by the state EOC. The county EOC followed a 6 hour operating procedure to produce situational reports. This was used throughout the activation regardless of the amount of activity.

B. Hernando County

Hernando County created a survey form that was used by their Public Information Center (PIC) staff. The form was designed to gather information from callers when winds made travel unsafe. They also used the forms post event to continue gathering information for resource allocation. The forms asked for information to determine if the situation was life threatening, priority, or routine in nature. Furthermore, they also identified the address, number of people in the home, if the problem was flood-related, trees down, home damage, electrical power needs or human needs such as medicine shortfalls or food/water needs.

This information proved to be invaluable to their recovery efforts. The PIC supervisor was asked to segregate and prioritize the needs, then send them to the appropriate EOC desk officers for action. This year they plan to automate the process and have the data entered into a network computer in the PIC so they can then access the data and review it without having the PIC supervisor spend hours separating forms.

C. City of Delray Beach

By carefully monitoring water production capabilities when massive power failures occurred, Delray Beach was able to avoid "boil water" notices by reducing output pressures, thereby conserving treated water and reducing demand for untreated resources. Stored reserves were used to "make up" hourly short falls.

XV. Conclusion

Between the terrorist attacks in 2001 and the unprecedented hurricane seasons of 2004 and 2005 the importance of emergency management has been brought to the forefront of our government and nation's consciousness. This report dealing with natural disaster preparedness, response and recovery encompasses a very broad approach at how to improve these three important facets. Natural disasters are unique in that one can never know exactly where they will originate, where they will go and what type of damage they will ultimately do.

While it is important to put policy and laws into place to lay the groundwork for dealing with these events, it is also important that government not take away the flexibility of emergency management officials to deal with the uniqueness of each disaster. Policy makers should be mindful that officials reacting to a natural disaster need to be able to deal with the particular nuances of each disaster at hand without feeling constrained to try and compare and contrast public policy ramifications when dealing with possible loss of life and property. NIMS and the NRP are attempts at standardizing incident management processes, protocols and procedures with an approach that unifies federal, state and local government officials. However, these programs are in their implementation phase and their overall effectiveness has yet to be measured.

Intergovernmental coordination has to remain a key component when dealing with all facets of natural disaster preparedness, response and recovery. All levels of government, as well as key players from the private sector must continue to communicate and work together to set sound policy. Most of all, each jurisdictional level must set forth clear policies and procedures so that everyone is working on the same page.

Educational and training components must continue to be utilized by all levels of government dealing with emergency management. While having policies, procedures and plans on paper may satisfy governmental requirements, each level of government and involved private entities must exercise and test the effectiveness of these plans as best they can prior to an actual natural disaster.

The citizenry must be active participants in disaster planning, response and recovery. Government cannot, and should not, be responsible for all aspects of disaster related processes. The only way citizens can prepare and react in the way their government would like is if they are educated and comfortable with what they are supposed to do when a disaster situation arises. In 2005, the Florida Legislature created the Hurricane Preparedness Sales Tax Holiday, which began June 1, 2005, and ended June 12, 2005. This tax break permitted Floridians to buy items related to hurricane preparedness without paying sales tax and many took this opportunity to purchase portable generators. A similar bill has been filed for the 2006 session.[128] The Legislature may want to consider moving this tax holiday two weeks earlier than the current start date of June 1st to coincide with National Hurricane Preparedness Week.

Florida has taken the lead in regard to emergency preparedness in the eyes of the nation. It is important due to the increasing frequency and strength of hurricanes and other natural disaster events that Florida remains proactive and supportive of all emergency management functions and provides necessary resources to save lives and property.

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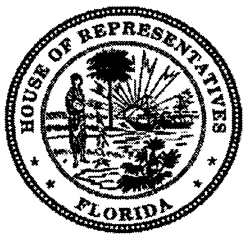
Tom Lee
President

Florida Legislative Committee on Intergovernmental Relations

Draft Interim Project Report

Allan Bense
Speaker



Compensation of Florida's School Superintendents

Revised January 2006

I. Introduction

At the request of the Legislative Committee on Intergovernmental Relations (LCIR) Chairman, Representative Adam Hasner, the committee staff surveyed each school district during September and October of 2005 to request the total annual amounts expended or budgeted by the district on behalf of the school superintendent's compensation package for the 2005 and 2006 fiscal years. In addition to the base salary paid to the school superintendent for services performed, the district's contributions for the following items were requested: 1) Federal Insurance Contribution Act (FICA) contributions to Social Security and Medicare; 2) Florida Retirement System (FRS) and/or optional retirement contributions; 3) group insurance premiums; 4) workers' compensation premiums; 5) unemployment compensation contributions; 6) salary supplements, if applicable, for completion of leadership development and training programs; and 7) contributions not reflected in any other category.

After three separate survey efforts, all school districts submitted survey responses. The Committee staff requested additional clarification to information furnished by the Collier and Liberty school districts; however, the requested clarification was not forwarded to the staff.

Florida's school districts currently employ 24 appointed school superintendents and 43 elected school superintendents, according to the Florida Association of District School Superintendents.[1] For those school districts that employ appointed school superintendents, the officer is considered the chief executive of the district school board, and the board is authorized to enter into contracts of employment with the superintendent. Pursuant to law, the district pays the appointed school superintendent a reasonable annual salary and considers the following factors in determining the compensation to be paid: 1) the population of the school district; 2) the rate and character of population growth; 3) the size and composition of the student body to be served; 4) the geographic extent of the district; 5) the number and character of the schools to be supervised; and 6) the individual's educational qualifications and professional experience.[2]

The compensation of elected school superintendents is determined by a statutory population-based salary formula. However, a district school board may approve, by majority vote, a salary in excess of the amount specified by the formula.[3] The primary determinants of an elected school superintendent's formula-based salary are: 1) the countywide population; 2) the annual factor, which is a measure of the average percentage increase in salaries of state career service employees for the current fiscal year, or seven percent, whichever is less; and 3) the cumulative annual factor, which is a measure reflecting the product of all previously-certified annual factors.

II. Findings

A. Florida's most populous school districts employ appointed school superintendents whereas the majority of small to medium population-sized districts employ elected school superintendents.

In Florida, each county constitutes a school district, and each district constitutes a unit for the control, organization, and administration of schools.[4] Each of the state's 10 most populous school districts, having a countywide population greater than 500,000, employ appointed superintendents. Of the 23 districts having a countywide population between 100,000 and 500,000, 12 employ appointed superintendents and 11 employ elected superintendents. Of the 34 districts having a countywide population less than 100,000, only 2 employ appointed superintendents and 32 employ elected superintendents.

B. The compensation paid on behalf of appointed school superintendents is generally greater than that paid on behalf of elected school superintendents.

Table 1 summarizes the fiscal year 2006 compensation of Florida's appointed school superintendents by district in descending order of countywide population in 2004. The reported total value of the compensation packages paid on behalf of the 24 appointed school superintendents ranges from a low of $113,022 to Okeechobee's superintendent to a high of $472,694 to Miami-Dade's superintendent.

The reported base salaries of 21 appointed superintendents exceed the amounts that those same officers would receive if their respective salaries were determined by the statutory formula rather than by negotiated contract. Additionally, the range of this monetary difference varies. At the low end, the negotiated base salary of Flagler's superintendent is $13,671 greater than the corresponding formula-based salary. At the high end, the negotiated base salary of Miami-Dade's superintendent is $139,040 greater than the corresponding formula-based salary. The differences in base salaries for the other 19 appointed superintendents fall within this range. Finally, the base salaries of the Hernando, Osceola, and Okeechobee appointed superintendents were reported at amounts less (i.e., $1,317, $1,140, and $3,107; respectively) than the corresponding formula-based salaries.

Table 2 summarizes the fiscal year 2006 compensation of Florida's elected school superintendents by district in descending order of countywide population. The reported total value of the compensation packages paid on behalf of the 43 elected school superintendents ranges from a low of $99,298 to Gilchrist's superintendent to a high of $173,591 to Monroe's superintendent.

The reported base salaries of 29 elected superintendents equal the amounts determined by the statutory formula. Nine elected superintendents reported base salaries exceeding their respective formula-based amounts. The base salaries of the Gilchrist, Marion, Okaloosa, and Pasco elected superintendents were reported at amounts less (i.e., $2,372, $2,069, $9,607, and $6,076; respectively) than the corresponding formula-based salaries.

C. The statutory authorization for participation by appointed school superintendents in the Special Qualification Salary and the Leadership Development and Performance Compensation Program is ambiguous and requires clarification.

Section 1001.47(5), F.S., authorizes a special qualification salary of up to $2,000 per year for each district school superintendent that has met the certification requirements established by the Florida Department of Education (hereinafter Department). The Department prescribes the course of continuing education, and the superintendent is required to annually complete such course to remain certified.[5] Any officer becoming certified during a calendar year shall receive a pro rata share of the special qualification salary based on the remaining period of the year. Any special qualification salary is added after the calculation of the finalized salary.[6]

According to the Department, elected school superintendents are eligible for this additional compensation, and the district school board is authorized to pay the special qualification salary after the superintendent satisfies the certification requirements. Some appointed school superintendents have participated in this continuing education program as professional development and used the certification as a factor when negotiating their compensation packages with their respective school boards.[7]

Section 1001.47(6), F.S., authorizes the Department to provide a leadership development and performance compensation program for district school superintendents, comparable to chief executive officer development programs for corporate executive officers. The program consists of two phases: a content, knowledge, and skills phase; and a competency acquisition phase. Upon successful completion of both phases and demonstrated successful performance, the school superintendent is issued a Chief Executive Officer Leadership Development Certificate and is given an annual performance salary incentive of not less than

$3,000 nor more than $7,500 based upon his or her performance evaluation.

According to the Department, elected school superintendents are eligible for this additional compensation, and the Department is authorized to pay the salary incentive after the superintendent satisfies the program's requirements. As with the special qualification course, some appointed school superintendents have participated in this leadership development program as professional development and used the certification as a factor in compensation package negotiations with their respective school boards.[8]

These supplemental training programs are conducted by the Florida Association of District School Superintendents (hereinafter Association) via a contract administered by the Department and funded by an annual legislative appropriation of $290,400.[9] The Association offers these training programs to both appointed and elected school superintendents.

The training program expenses associated with the special qualification salary are paid by the Association while the superintendents' travel expenses are paid by the individual school districts. However, both the training program expenses and superintendents' travel expenses, associated with the leadership development and performance compensation program, are paid by the Association.[10]

Statutory ambiguity arises from the language of s. 1001.47(4), F.S., which provides that the section does not apply to appointed school superintendents. This particular subsection existed in law prior to the statutory introductions of the special qualification salary in 1980[11] and the leadership development and performance compensation program in 1986.[12]

As a result, the argument could be made that the intent was to restrict the formula-based salary calculation to elected school superintendents only. Conversely, an argument could be made that the Legislature meant to extend the restriction to these supplemental training programs because the subsection was not stricken when the programs were enacted or in other years when amendments to that section were passed. Additionally, based on survey responses received from a few school districts, there seems to be a perception among some districts that appointed superintendents are not eligible to participate in these training programs.

III. Policy Options

A. The Legislature should consider amending Part II of Chapter 1001, F.S., to remove any ambiguity regarding the participation by appointed school superintendents in the supplemental training programs.

The statutory salary formula calculation for elected school superintendents would not be impacted by the implementation of this policy option. Additionally, the implementation would not make the formula applicable to appointed school superintendents.

B. The Legislature should consider further policy discussion regarding the statutory salary formula and corresponding factors used to compensate elected school superintendents.

As previously discussed, school districts pay appointed school superintendents a reasonable annual salary and consider the following factors in determining the compensation to be paid: 1) the population of the school district; 2) the rate and character of population growth; 3) the size and composition of the student body to be served; 4) the geographic extent of the district; 5) the number and character of the schools to be supervised; and 6) the individual's educational qualifications and professional experience.

Alternatively, the compensation of elected school superintendents is determined by a statutory population-based salary formula. The primary determinants of an elected school superintendent's formula-based salary are: 1) the countywide population; 2) the annual factor, which is a measure of the average percentage increase in salaries of state career service employees for the current fiscal year, or seven percent, whichever is less; and 3) the cumulative annual factor, which is a measure

reflecting the product of all previously-certified annual factors.

With the exception of countywide population, the remaining factors considered in determining the compensation of elected school superintendents are fundamentally different than those used to determine the compensation of appointed superintendents. As previously discussed, legal authority exists for a district school board, which employs an elected superintendent, to approve a salary in excess of the amount specified by the statutory formula. However, according to the LCIR survey results, the reported fiscal year 2006 base salaries for 29 of 43 elected superintendents equal the amounts determined by the statutory formula. Only nine elected superintendents reported base salaries exceeding their respective formula-based amounts. This observation suggests that other factors, such as local politics, may act to limit these voted salary increases. Consequently, the Legislature may wish to consider whether the factors used in the salary-formula calculation are currently appropriate and reflective of the duties assumed by an elected superintendent in the control, organization, and administration of schools.

IV. Compensation of Elected School Superintendents

A. Background

The practice of determining the compensation of county officers, which includes elected school superintendents, existed in state law prior to the 1968 constitutional revision. However, it was not until 1973 that the Legislature authorized the salary compensation formula that was the precursor to its present form.[13] Prior to the 1973 legislation, the authorization of salary adjustments for county officers required frequent legislative action. The addition of the initial factor, annual factor, and cumulative annual factor in 1980 completed the transformation of the salary compensation formula to its present form.[14]

In expressing its intent, the Legislature "determined that a uniform and not arbitrary and discriminatory salary law is needed to replace the haphazard, preferential, inequitable, and probably unconstitutional local law method of paying elected county officers."[15] In addition, the Legislature intended to provide for uniform compensation of county officers having substantially equal duties and responsibilities and base these uniform salary schedules on countywide population.[16]

The current salary formula methodology specifies that the latest official population estimates for each county serve as a major component of the salary computation. In addition to the population estimates, the salary formula contains five other components. The *base salary* and *group rate* components for the elected school superintendent are specified in law.[17] The *initial factor* component is currently set in law as a constant numerical value.[18] Finally, the Florida Department of Management Services annually certifies the remaining two components, the *annual factor* and *cumulative annual factor*, used in the salary formula computations.[19] Generally, this annual certification occurs by the month of September.

Prior to 1984, the Florida Department of Community Affairs computed finalized salaries for county constitutional officers; however, that authority was repealed in 1984.[20] Beginning in 1985, the Advisory Council on Intergovernmental Relations, the predecessor to the LCIR, agreed to annually compute the salaries of county constitutional officers and elected school officials as a service to county governments and school districts.

B. Relevant Salary Formula Terminology

Population means the latest annual determination of population of local governments produced by the Executive Office of the Governor in accordance with s. 186.901, F.S.[21] For the years in between the decennial censuses, the Bureau of Economic and Business Research at the University of Florida generates population estimates, in accordance with a contract administered by the Legislature.

Salary means the total annual compensation, payable under the schedules set forth in ch. 145, F.S., to be paid to an officer as personal income.[22]

Annual Factor means one plus the lesser of either: 1) the average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the Florida Department of Management Services or as provided in the General Appropriations Act; or 2) seven percent.[23]

Cumulative Annual Factor means the product of all annual factors certified under this act prior to the fiscal year for which salaries are being calculated.[24]

Initial Factor means a factor of 1.292, which is the product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by ch. 73-173, L.O.F., and intended by the Legislature to be preserved in adjustments to salaries made prior to the enactment of ch. 76-80, L.O.F., multiplied by the annual increase factor authorized by ch. 79-327, L.O.F.[25]

C. Salary Formula Methodology

STEP 1 of the salary computation involves the determination of the relevant population group number, based on the most recent estimate of countywide population. The official 2004 county population estimates used to compute the fiscal year 2006 salaries are listed in **Table 1**. Based on a county's population estimate, the corresponding group number is determined from the set of population groupings listed below.

Minimum Population	Maximum Population	Group Number
0	49,999	I
50,000	99,999	II
100,000	199,999	III
200,000	399,999	IV
400,000	999,999	V
1,000,000	no limit	VI

STEP 2 of the salary computation involves the determination of the relevant base salary and group rate that corresponds to the population group number determined in the first step.

Group Number	Base Salary	Group Rate
I	$21,250	0.07875
II	$24,400	0.06300
III	$27,550	0.02625
IV	$30,175	0.01575
V	$33,325	0.00525
VI	$36,475	0.00400

STEP 3 involves computing the salaries for each county's elected officers using the formula outlined below.

Salary = [Base Salary + (Population Above Group Minimum x Group Rate)] x Initial Factor x Certified Annual Factor x Certified Cumulative Annual Factor

Salary Calculation: Leon School Superintendent

2004 County Population Estimate:	263,896
Group Number (IV) Minimum:	200,000
Base Salary:	$30,175
Group Rate:	0.01575
Initial Factor:	1.292
Certified Annual Factor:	1.0414
Certified Cumulative Annual Factor:	2.9372

Finalized Salary = [$30,175 + [(263,896 - 200,000) x 0.01575]] x 1.292 x 1.0414 x 2.9372

Finalized Salary = $123,228

Although finalized salary calculations, based on the statutory formula, are made for each district's school superintendent, the formula-based salaries are not applicable to appointed superintendents.[26] Each elected school superintendent receives as salary the amount determined by statutory formula; however, a district school board may approve, by majority vote, a salary in excess of the amount determined by formula.[27] Also, the finalized salaries calculated for elected school superintendents do not include any additional training-based salary supplements.

D. Effective Date of Salary Changes

Current law requires that county officers' salaries be adjusted each fiscal year, but fails to specify whether the state or local government fiscal year shall be applied.[28] Florida's county governments operate on the October 1st to September 30th local fiscal year, while Florida's school districts operate on the July 1st to June 30th state fiscal year. In an attempt to clarify this uncertainty, Florida's Attorney General opined that salary increases are effective October 1st for the county officers and July 1st for the elected school superintendents.[29]

E. Payment of Group Insurance Premiums

The payment of premiums or charges for group insurance for those county officers whose compensation is fixed by ch. 145, F.S., is authorized.[30] All or any portion of the payment of the costs of life, health, accident, hospitalization, or annuity insurance, as authorized in s. 112.08, F.S., for county officers shall not be deemed to be compensation within the purview of ch. 145, F.S.[31]

F. Role of the LCIR

Subsequent to the certification of the annual factor and cumulative annual factor by the Florida Department of Management Services, finalized salaries are computed. The LCIR is under no statutory obligation to perform these calculations but has done so as a service to interested parties. Generally, these finalized salaries are available prior to the October 1st start of the local government fiscal year.

In the context of its annual salary report, the LCIR does not compile salary data for appointed school superintendents or the additional salary, in excess of the amount determined by formula, that may be authorized by school districts for elected school superintendents. Additionally, the LCIR does not compile data on the amounts paid to school superintendents for the special qualification salary as well as the leadership development and performance compensation program.

V. Conclusion

If the Legislature wishes to eliminate the ambiguity concerning appointed school superintendents' participation in the supplemental training programs and the use of state-appropriated funds to pay for the training and travel expenses associated with the participation in such programs by appointed superintendents, it should consider amending Part II of Chapter 1001, F.S. Additionally, the Legislature may wish to consider further policy discussions regarding the statutory formula and corresponding factors used to compensate elected school superintendents.

Table 1 Compensation of Florida's Appointed School Superintendents for the Fiscal Year Ending June 30, 2006						
School District	**2004 Countywide Population**	**Base Salary: Formula**	**Base Salary: Survey**	**Difference: Survey - Formula**	**Other Compensation: Survey**	**Total Compensation: Survey**
Miami-Dade	2,379,818	$165,960	**$305,000**	$139,040	**$167,694**	**$472,694**
Broward	1,723,131	$155,579	**$233,950**	$78,371	**$51,108**	**$285,058**
Palm Beach	1,242,270	$147,978	**$195,000**	$47,022	**$59,690**	**$254,690**
Hillsborough	1,108,435	$145,862	**$215,000**	$69,138	**$55,848**	**$270,848**
Orange	1,013,937	$144,368	**$179,962**	$35,594	**$58,663**	**$238,625**
Pinellas	943,640	$142,979	**$185,850**	$42,871	**$72,308**	**$258,158**
Duval	840,474	$140,838	**$196,593**	$55,755	**$65,183**	**$261,776**
Polk	528,389	$134,363	**$193,176**	$58,813	**$57,689**	**$250,865**
Brevard	521,422	$134,219	**$181,553**	$47,334	**$43,224**	**$224,777**
Lee	521,253	$134,215	**$152,000**	$17,785	**$53,932**	**$205,932**
Volusia	484,261	$133,448	**$161,200**	$27,752	**$70,331**	**$231,531**
Seminole	403,361	$131,769	**$166,859**	$35,090	**$51,115**	**$217,974**
Sarasota	358,307	$129,104	**$159,650**	$30,546	**$74,098**	**$233,748**
Collier	306,186	$125,860	**$169,600**	$43,740	**CR**	**CR**
Manatee	295,242	$125,179	**$180,000**	$54,821	**$71,698**	**$251,698**
Alachua	236,174	$121,502	**$141,250**	$19,748	**$46,553**	**$187,803**
Saint Lucie	226,216	$120,882	**$149,863**	$28,981	**$70,092**	**$219,955**
Osceola	225,816	$120,858	**$119,718**	($1,140)	**$35,212**	**$154,930**
Charlotte	156,985	$114,778	**$135,000**	$20,222	**$38,718**	**$173,718**
Saint Johns	149,336	$113,995	**$129,320**	$15,325	**$45,068**	**$174,388**
Hernando	145,207	$113,567	**$112,250**	($1,317)	**$30,030**	**$142,280**
Indian River	126,829	$111,660	**$148,399**	$36,739	**$63,675**	**$212,074**
Flagler	69,683	$101,329	**$115,000**	$13,671	**$41,700**	**$156,700**
Okeechobee	38,004	$95,807	**$92,700**	($3,107)	**$20,322**	**$113,022**

CR = Additional clarification requested but not received.

Table 2 Compensation of Florida's Elected School Superintendents for the Fiscal Year Ending June 30, 2006						
School District	**2004 Countywide Population**	**Base Salary: Formula**	**Base Salary: Survey**	**Difference: Survey - Formula**	**Other Compensation: Survey**	**Total Compensation: Survey**
Pasco	389,776	$131,063	**$124,987**	($6,076)	**$33,488**	**$158,475**
Escambia	307,226	$125,925	**$125,925**	$0	**$34,545**	**$160,470**
Marion	293,317	$125,059	**$122,990**	($2,069)	**$41,929**	**$164,919**
Leon	263,896	$123,228	**$123,228**	$0	**$22,051**	**$150,279**
Lake	251,878	$122,480	**$122,480**	$0	**$31,464**	**$153,944**
Okaloosa	185,778	$117,775	**$108,168**	($9,607)	**$29,706**	**$137,874**
Clay	163,461	$115,460	**$115,460**	$0	**$30,704**	**$146,164**
Bay	158,437	$114,939	**$114,939**	$0	**$35,063**	**$150,002**
Martin	137,637	$112,781	**$112,781**	$0	**$34,541**	**$147,322**
Santa Rosa	133,721	$112,375	**$112,375**	$0	**$24,916**	**$137,291**
Citrus	129,110	$111,897	**$111,897**	$0	**$31,620**	**$143,517**
Highlands	92,057	$106,899	**$106,899**	$0	**$38,185**	**$145,084**
Monroe	81,236	$104,205	**$127,058**	$22,853	**$46,533**	**$173,591**
Putnam	73,226	$102,211	**$111,544**	$9,333	**$38,352**	**$149,896**
Sumter	66,416	$100,515	**$114,760**	$14,245	**$37,248**	**$152,008**
Nassau	65,016	$100,167	**$124,207**	$24,040	**$33,482**	**$157,689**
Columbia	60,453	$99,031	**$100,021**	$990	**$40,555**	**$140,576**
Walton	50,543	$96,563	**$96,563**	$0	**$28,457**	**$125,020**
Jackson	48,870	$99,189	**$99,189**	$0	**$28,865**	**$128,054**
Gadsden	46,857	$98,562	**$98,562**	$0	**$34,113**	**$132,675**
Suwannee	37,713	$95,716	**$95,716**	$0	**$28,830**	**$124,546**
Levy	37,486	$95,646	**$95,646**	$0	**$34,143**	**$129,789**
Hendry	37,394	$95,617	**$96,670**	$1,053	**$33,304**	**$129,974**
De Soto	34,105	$94,593	**$94,593**	$0	**$34,739**	**$129,332**
Hardee	27,787	$92,627	**$92,627**	$0	**$36,454**	**$129,081**
Bradford	27,740	$92,613	**$92,613**	$0	**$26,366**	**$118,979**
Wakulla	25,505	$91,917	**$110,942**	$19,025	**$25,668**	**$136,610**
Baker	23,963	$91,437	**$107,896**	$16,459	**$37,718**	**$145,614**
Washington	22,434	$90,961	**$90,961**	$0	**$26,844**	**$117,805**
Taylor	20,941	$90,497	**$90,497**	$0	**$20,419**	**$110,916**
Madison	19,498	$90,047	**$90,047**	$0	**$26,905**	**$116,952**
Holmes	19,012	$89,896	**$89,896**	$0	**$27,191**	**$117,087**
Gulf	16,171	$89,012	**$89,012**	$0	**$26,639**	**$115,651**
Gilchrist	15,900	$88,928	**$86,556**	($2,372)	**$12,742**	**$99,298**
Dixie	14,928	$88,625	**$88,625**	$0	**$33,598**	**$122,223**
Union	14,620	$88,529	**$88,529**	$0	**$34,755**	**$123,284**
Hamilton	14,303	$88,431	**$88,431**	$0	**$24,383**	**$112,814**
Jefferson	14,064	$88,356	**$88,356**	$0	**$44,503**	**$132,859**
Calhoun	13,610	$88,215	**$88,215**	$0	**$26,433**	**$114,648**
Glades	10,733	$87,320	**$87,320**	$0	**$27,409**	**$114,729**
Franklin	10,649	$87,294	**$87,893**	$599	**$33,010**	**$120,903**
Lafayette	7,535	$86,324	**$86,324**	$0	**$25,902**	**$112,226**
Liberty	7,354	$86,268	**CR**	CR	**CR**	**CR**

CR = Additional clarification requested but not received.

ENDNOTES

[1] http://www.fadss.org

[2] Section 1001.50, F.S. (2005).

[3] Section 1001.47(1), F.S. (2005).

[4] Section 1001.30, F.S. (2005).

[5] Section 1001.47(5), F.S. (2005).

[6] Section 145.19(2), F.S. (2005).

[7] Maria Eckard, Deputy Director of Government Relations, Florida Department of Education; e-mail dated October 3, 2005.

[8] *Ibid.*

[9] Diann Morell, Director of Training and Development, Florida Association of District School Superintendents; e-mail dated October 5, 2005.

[10] *Ibid.*

[11] Chapter 80-377, L.O.F.

[12] Chapter 86-156, L.O.F.

[13] Chapter 73-173, L.O.F.

[14] Chapter 80-377, L.O.F.

[15] Section 145.011(2), F.S. (2005).

[16] *Id.*, at (3).

[17] Section 1001.47(2), F.S. (2005).

[18] Section 145.19(1)(c), F.S. (2005).

[19] *Id.*, at (2).

[20] Chapter 84-241, L.O.F.

[21] Section 145.021(1), F.S. (2005).

[22] *Id.*, at (2).

[23] Section 145.19(1)(a), F.S. (2005).

[24] *Id.*, at (1)(b).

[25] *Id.*, at (1)(c).

[26] Section 1001.47(4), F.S. (2005).

[27] *Id.*, at (1).

[28] Section 145.19(2), F.S. (2005).

[29] Florida Attorney General Opinion 79-87.

[30] Section 112.14, F.S. (2005).

[31] Section 145.131(3), F.S. (2005).

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Tom Lee
President

Allan Bense
Speaker

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Memorandum

To: **Rip Colvin**
Executive Director, LCIR

From: **Carolyn Horwich** CH
Staff Attorney, LCIR

Date: **December 15, 2005**

Re: **Affordable Housing Survey**

I. Introduction

The Legislative Committee on Intergovernmental Relations directed staff to issue a survey to local governments inquiring about their efforts to increase affordable housing stock. Through the Florida Association of Counties and the League of Cities, LCIR staff disseminated the survey to local governments. The response rate was poor. No municipalities responded and only 19 counties responded.

II. Survey Instrument and Responses

Local governments were asked a series of questions from five categories of issues: (A) compliance with state mandated comprehensive planning regarding affordable housing, (B) the menu of affordable housing requirements and incentives offered, (C) the existence and plans for land banks and land trusts that are earmarked for affordable housing, (D) the existence and plans for higher density zoning provisions to assist in the development of affordable housing, and (E) local efforts to rehabilitate and maintain the existing stock of affordable housing.

In light of the poor response rate, the significance of the survey responses is somewhat diminished. However, there were some common threads among the answers provided. The survey results are summarized below.

A. Compliance with State Comprehensive Plan Requirements
No jurisdiction indicated that it was not in compliance with state comprehensive plan requirements.

B. Incentives
Of the 19 responding counties, 17 have affordable housing requirements or offer incentives. The most commonly cited incentive programs indicate: fourteen use an expedited review or permitting process; nine have a density bonus program; eight institute some sort of fee waiver; four allow for accessory dwellings; and three permit zero-lot lines. Only five counties specifically mentioned participating in one or more state or federal housing initiatives, such as Community Development Block Grants, SHIP or SAIL. Several counties pointed out that the Board of County Commissioners reviews and analyzes the effect local policies and ordinances will have on affordable housing before they are adopted and implemented. Other incentives used by respondents include: gap financing; use of multi-family dwelling units in conjunction with commercial development; bond financing; having the affordable housing designation determined by the county; and requiring that developments have a certain amount of units set aside for moderate or low income households. A few counties, such as Highlands County, have established their own local Affordable Housing Task Force to examine all facets of how to increase the affordable housing stock and related issues.

Three counties, Highlands, Manatee and Monroe made specific references to workforce or employee housing. Highlands County now offers grant subsidies to certain workforce members if they purchase a home in a CDBG target area. Manatee County developed an Affordable Housing/Workforce Housing Rapid Response Program that is designed to assist developers in moving through the development and permitting process more easily. Monroe County reports that impact fees are waived for "employee units", although it does not indicate employees of what entity.

When asked which, if any, of the incentives used work the best, no trend is recognizable. A few counties report that the incentives are not used much or that they are being reevaluated to determine their usefulness. Other counties state that each incentive has its own inherent value but is useful only to the degree that developers take advantage of the incentive. Also, the success of a particular incentive can hinge on the nuances of the county. Monroe County, for example, has its greatest success with allowing increased density for affordable housing efforts. Sarasota County, however, rescinded its density bonus program in 1997 because it was not being utilized.

Almost one-third of the respondents mentioned that escalating land and housing costs are putting affordable housing creation and preservation in dire jeopardy.

C. Land Bank or Land Trust
Not one of the 19 responding counties currently has a land bank or land trust, although ten jurisdictions are exploring that option. Fifteen of the counties provide funds or other support (such as office space) to their local Housing Authority or other assistance program.

D. Higher Density
Twelve of the respondents currently have provisions allowing developers to secure higher densities under certain circumstances and several others are looking into that option. Three counties with such an incentive state that it is underutilized by developers, and ways to make it more attractive are being explored.

E. Rehabilitation and Preservation of Existing Affordable Housing Stock
Four counties have established at least one Community Redevelopment Agency; one county reports that affordable housing was not the reason for establishing the CRAs, and another county states that its CRA board is concerned with redevelopment replacing affordable and workforce housing.

The majority of counties indicate that their efforts at rehabilitation and preservation include the use of CDBG and SHIP funds. St. Lucie County reports it has "received significant funding as a result of the hurricanes in 2004" and is using these funds in conjunction with SHIP funds for its rehabilitation activities.

Seven counties identify and acquire surplus lands or properties foreclosed on and then transfer them to not-for-profit entities to build on. Very few counties have ordinances requiring deed restrictions that will keep the property affordable. Those counties that do have such provisions, however, seem to have unique ordinances. Monroe County's ordinance has 30, 50 and 99 deed restrictions. Pasco County only has restrictions on county subsidized rental properties, and Collier County has deed restrictions only on properties falling under the Affordable Housing Density Bonus Program.

III. Conclusion
Counties report there is a shortage of affordable housing in their jurisdictions. They also report modest success with certain initiatives. Yet, there is a strong desire to make existing incentives that are underutilized more attractive to developers, and to come up with new ideas and programs. Counties express their concern, however, that regardless of the ingenuity of the incentive devised, the state as a whole is currently experiencing such escalating property prices, that the affordable housing stock is not only failing to grow significantly, but instead, may be decreasing.