

MEMORANDUM

To: Mayor Glickstein
Vice Mayor Chard
Commissioner Petrolia
Commissioner Katz
Commissioner Johnson
Neal DeJesus, City Manager

From: Mat Forrest *M. F.*
Date: July 10, 2017
Subject: Updated Legislative Summary and 2018 Dates

The 2017 Legislative season in Florida has officially concluded. The regular Session wrapped up on May 6th and a Special Session to address some economic development issues wrapped up on June 9th. I don't expect there to be any further legislative action until the fall when the 2018 Pre-Session interim committee meetings begin.

On Monday, June 26, 2017 the Governor also completed consideration on the last batch of bills passed by the Legislature in both the Regular Session and Special Session. Included in this last round of approvals was the signing of HB 807 Relating to the Marketing Practices for Substance Abuse Services by Rep. Hager (R, Boca Raton) and Rep. Harrell (R, Stuart) and SB 788 by Sen. Clemens (D, Lake Worth).

Below is a refresher on the legislation that passed during the 2017 season as well as an update on key dates for the fast approaching 2018 Session.

2018 Session

It will be a quick "off season" as the 2018 Session begins in less than 6 months and Pre-Session interim committee meetings begin in just two months. Here is a complete list of key dates to know for the 2018 Session:

- Week of September 11, 2017
- Week of October 9, 2017
- Week of October 23, 2017
- Week of November 6, 2017
- Week of November 13, 2017
- Week of December 4, 2017
- Regular Session begins, Tuesday, January 9, 2018
- Sine Die of Regular Session, Friday, March 9, 2018

In preparation for the upcoming Session, I will continue to work with your staff to identify issues and possible appropriation projects to file. Legislative deadlines in which to file bills have not been announced but I would recommend we identify projects for Delray Beach by September 8, 2017.

2017 Appropriations:

It was a very tough year for budget items. The House took a very conservative approach to member projects in the budget. Also, the final budget passed does not include several of Governor Scott's priorities so it's highly likely that he will veto many of the projects that did make the legislative cut.

We worked with the City staff and local legislators and filed the following local funding requests on behalf of the City of Delray Beach but unfortunately, we were not successful this year in landing a place in the budget for these items:

- **HB 3947 Pompey Park Renovation ...FAILED**

- \$4 million Request
- Sponsored by Rep. Jacquet & Sen. Clemens

The specific goal of this project is to improve the health and welfare of the NW/SW Delray Beach neighborhoods through increased recreational, educational, and leisure opportunities.

Sub-goals include:

1. An overall reduction in water related deaths through increased aquatic/swim lessons
2. Increase graduation rate through outcome based education after-school and summer programs,
3. Reduce neighborhood crime and recidivism through outcome based programming for 13 - 25 year olds.

- **HB 2437 Atlantic Dunes Park Rehabilitation ...FAILED**

- \$400,000 Request
- Sponsored by Rep. Hager & Sen. Clemens

The project seeks \$400,000 to be equally matched by the City. The park area suffers from invasive exotic plants on the dune and a pavilion and portion of boardwalk that need replaced. There is also a water quality issue created by King Tide induced flooding in a parking lot adjacent to a low seawall on the Intracoastal Waterway that allows contaminants from the parking area to flow into the waterway. This project will design and implement solutions to resolve these many issues.

- **HB 4019... Seawall Adaptation and Living Shorelines ...FAILED**

- \$895,000 Request
- Sponsored by Rep. Jacquet & Sen. Clemens

The City of Delray Beach has experienced increased incidents of coastal flooding associated both with King Tide and other extreme weather events. These incidents of flooding have caused damage to seawall structures and roadways within the City. This project will assess all seawalls within the city limits; update the City's Stormwater Master Plan; and provide for design and construction of the City's seawall system and associated promenade stretching from Veterans Park to the City Marina.

The appropriation philosophy and politics in the House made this a very difficult year for member projects to be funded. This was also the first time we sought funding for the Septic to Sewer project. I'm hopeful that with more time and consistent advocacy over the summer we will get one or more of them included in the January 2018 Session.

Legislative Tracking Report:

Sober Homes... PASSED

HB 807 Relating to Marketing Practices for Substance Abuse Services by Rep. Hager (R, Boca Raton) and Rep. Harrell (R, Stuart) and SB 788 by Sen. Clemens (D, Lake Worth).

As you know we pushed hard for this bill along with all of you. This legislation grew out of the Palm Beach County State Attorney Task Force. It implements the recommendations made by the Task Force and adds other provisions intended to help law enforcement deal with unscrupulous recovery residences.

The bill:

- Expands current prohibitions on referrals between licensed treatment providers and certain recovery residences.
- Prohibits service providers, recovery residence operators, and third parties that provide advertising or marketing services from engaging in deceptive marketing practices and provided criminal penalties for violations.
- Prohibits materially false or misleading statements or information about the identity, products, goods, services, or geographical location of a licensed service provider made to induce a person to seek treatment with that provider.
- Expands the items that may not be used to induce a patient referral to include any "benefit".
- Adds patient brokering to the offenses that constitute "racketeering activities".
- Allows the Office of Statewide Prosecution to investigate and prosecute patient brokering and enhances penalties for higher volumes of patient brokering.

- Requires entities providing substance abuse marketing services to be licensed by the Department of Agriculture and Consumer Services (DACS) under the Florida Telemarketing Act.
- Creates a new provision for applications for disclosure of patient records for individuals receiving substance abuse services in an active criminal investigation, which authorizes disclosure without prior notice.
- The bill also strengthens DCF's substance abuse treatment provider licensure program and improves the regulation of service providers. DCF must draft rules on minimum licensure standards and require certain providers to be accredited.
- The bill also expands DCF's authority to take action against a service provider for violations on a tier-based system and includes fining authority.

This bill was approved by the Governor on June 26 and became effective on July 1, 2017.

Local Regulation Preemption....FAILED

HB 17 Relating to Local Regulation Preemption by Fine (R, Palm Bay)

This House bill could have been one of the most impactful bills for local governments filed this Session. After initially moving well it died quietly waiting to be heard in its second of two committees. More importantly the Senate version of this bill was never heard.

The House bill essentially preempted to the State most local government regulations.
It stated:

“...After January 1, 2017, a local government may not adopt or impose a new regulation on a business, profession, and occupation unless the regulation is expressly authorized by general law.

(3) PREEMPTION OF REGULATION TO THE STATE.- Notwithstanding any law to the contrary, this section expressly preempts the regulation of businesses, professions, and occupations to the state and supersedes any local government regulation of businesses, professions, and occupations with the exception of the following:

(a) A regulation adopted prior to January 1, 2017, without general law authority. Any such regulation expires on January 1, 2020.

(b) A regulation expressly authorized by general law.

(4) EXISTING REGULATION LIMIT. -A local government with a local regulation concerning a business, profession, or occupation that is retained pursuant to paragraph

(3)(a) may not impose additional regulations on that business, profession, or occupation or modify such regulation except to repeal or reduce the regulation.

(5) REGULATIONS NOT AUTHORIZED. — Any local regulation of a business, profession, or occupation that is not authorized under this section or expressly authorized by general law does not apply and may not be enforced.

A similar bill was filed in the Senate, SB 1158. It set up a procedure for local regulations to be more easily challenged at the State level. It was never heard in committee.

Micro Wireless Infrastructure Preemption... PASSED

SB 596 Relating to Utilities by Sen. Hutson (R, Palm Coast) and HB 687 by Rep. La Rosa (R, Kissimmee)

As passed, HB 687 creates the “Advanced Wireless Infrastructure Deployment Act”. The legislation did change significantly from when it was initially filed due to pressure from local governments, however I know the passage of the bill is still a disappointment to all local governments.

Champions of the bill such as AT&T advocate that the bill will allow for the installation of “5G Wireless Technology...speeds that were previously only available through a wired connection...to wireless devices” through the installation and maintenance of micro-wireless facilities (poles and hardware on existing poles) across the state.

The bill defines Small wireless facilities as, “wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- Dimensions are not larger than 24 inches in length, 15 inches in
- All associated wireless equipment is cumulatively no more than 28 cubic feet in volume.”

In short, the bill provides that a municipality may not “prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill.”

There are several exceptions in the bill and the bill is very technical on many issues. Also, the bill was amended many times during the Session. I highly recommend your City attorney and related staff read the final version of the bill and staff analysis to know exactly what is being enacted if approved by the Governor.

Under the bill, a utility pole includes “any pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.” However, it does NOT include any “horizontal support structures to which signal lights or other traffic control devices are attached or any pole or similar structure 15 feet in height or less. This was a significant change that we pushed for from how the bill was originally filed.

The bill also provides that an authority may deny an application if the proposed collocation:

- Materially interferes with the safe operation of traffic control equipment;
- Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- Materially interferes with compliance with the Americans with Disabilities Act or similar law;
- Materially fails to comply with the 2010 edition of the DOT Utility Accommodation Manual; or
- Fails to comply with “applicable codes” as defined in the bill.

The bill also has exemptions for historic preservation zoning regulations consistent with “47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966.” An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017 which are applicable to a historic area designated by the state or authority.

Lastly the bill further provides that an authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes had been publicly declared on or before April 1, 2017.

This bill was approved by the Governor on June 26 and became effective on July 1, 2017.

Local Business Taxes....FAILED

HB 487 & SB 330 Relating to Local Business Taxes by Rep. Renner (R, Palm Coast) and Sen. Steube (R, Sarasota)

These two bills started out as possible large impacts to Local Business Taxes. They changed dramatically during the committee process and in the end, did not pass either way.

The House bill prohibited a county or municipality from levying a local business tax that was adopted on or after January 1, 2017, and the bill creates an exemption from local business taxes for low-income persons who engage in or manage a business, profession, or occupation.

To qualify, the individual claiming the exemption must receive public assistance, as defined in s. 409.2554, F.S., or have a household income less than 130 percent of the federal poverty level. It also expands the exemption for disabled veterans to include veterans, veterans' spouses, and active duty military service members' spouses.

The Senate bill was narrower and simply provided an exemption from the local business tax for specified veterans, spouses of veterans, the spouse of active service members, and low-income individuals if the individual completes and signs a Request for Fee Exemption.

Local Elections...FAILED

The House once again passed legislation that would have restricted the options that local governments have on selecting a date for municipal elections. Originally the bill was filed as HB 7103 Relating to Elections by the House Government Accountability Committee and Rep. Caldwell (R, Lehigh Acres) and, specifically to local governments, the bill:

- Required municipal elections to be held as of July 1, 2020, on one of four dates:
 - at the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the first Tuesday after the first Monday in April in an odd numbered or even-numbered year.
- Required state or local officers who qualify for federal public office to resign from the office they presently hold if the terms or any part thereof will run concurrently and sets the requirements for such resignations.
- Required that in any election the word "incumbent" must appear on the ballot beside the name of a candidate for reelection to public office when the office sought is not subject to term limits.

However, the House decided to deviate from that original bill and placed the language in HB 1325 Relating to Elections by Rep. Caldwell (R, Lehigh Acres) and Rep. Renner (R, Palm Coast).

As expected this bill passed the House. We worked hard in the Senate and advocated strongly that the Senate not accept the local government sections of the bill. The Senate considered the bill right up to the final day and at one point filed an amendment to include the local government election dates. In the end, the Senate withdrew the amendment, did not concur with the House position, and sent the bill back to the House. The House, added the language back in and sent it back to the Senate. The bill died waiting to be heard again in the Senate. It was one of the last bills left waiting to be heard when then Senate adjourned late on Friday, May 8.

Firefighter Cancer Coverage...FAILED

HB 143 & SB 158 Relating to Firefighters by Rep. Fitzenhagen (R, Ft. Myers) & Rep. Willhite (D, Wellington) and Sen. Latvala (R, Clearwater)

These bills provided that “any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by multiple myeloma, non-Hodgkin’s lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered “in the line of duty” unless the contrary is shown by competent evidence.”

These bills were filed last year but never moved in the House, and that was the case again this year. Despite having several co-sponsors the House bill was never heard.

This year the House bills co-sponsors were:

- Rep. Asencio (D, Miami)
- Rep. Beshears (R, Monticello)
- Rep. Clemons (R, Jonesville)
- Rep. Cortes (D, Kissimmee)
- Rep. Duran (D, Miami)
- Rep. Edwards (D, Sunrise)
- Rep. Fischer (R, Jacksonville)
- Rep. Gruters (R, Sarasota)
- **Rep. Hager (R, Boca Raton)**
- Rep. Jacobs (D, Coconut Creek)
- Rep. Lee Jr. (D, Ft. Pierce)
- Rep. Moraitis (R, Ft. Lauderdale)
- Rep. Moskowitz (D, Coral Springs)
- Rep. Payne (R, Palatka)
- Rep. Santiago (R, Deltona)
- **Rep. Silvers (D, West Palm Beach)**
- **Rep. Slosberg (D, Delray Beach)**
- Rep. Watson (D, Gainesville)
- Rep. Williamson (D, Pace)
- Rep. Latvala (R, Clearwater)

The Senate bill was heard once and unanimously passed its first of 4 committees. Language relating to this was also filed as an amendment to legislation late in the Session but not adopted.

Vacation Rentals...FAILED

Despite a lot of committee stops and debate all legislation relating to the regulation or de-regulation of vacation rentals failed.

The main bill was HB 425 by Rep. La Rosa (R, Saint Cloud), co-sponsored by Rep. Raulerson (R, Plant City), Rep. Santiago (R, Deltona), Rep. Eagle (R, Cape Coral), and Rep. White (R, Pensacola). It passed the House by a vote of 63 to 56.

The Senate bill, SB 188 Relating to Vacation Rentals by Sen. Steube (R, Sarasota), made it to the floor with much debate in each committee stop but was never brought up. It died on the calendar.

Bills on the opposite side of the debate, giving more regulations to local governments were filed but never heard in committee. HB 6003 Relating to Vacation Rentals by Rep. Richardson (D, Miami Beach) and co-sponsored by Rep. Moraitis (R, Ft. Lauderdale) and SB 1516 by Sen. Rader (D, Delray Beach).

Homestead Property Tax Exemption Question... PASSED

There were several pieces of legislation proposed this year that would have had a large impact on municipal and county governments and even though many of them died some did pass. The most significant of these was the passage of Joint Resolution 7105.

It places a question on the November 2018 statewide ballot that proposes an amendment to the Florida Constitution to “increase the homestead exemption, for all levies other than school district levies, on the assessed value greater than \$100,000 and up to \$125,000.”

If approved by 60% of the electors, it takes effect January 1, 2019.

The Revenue Estimating Conference has determined that if the voters approve the constitutional amendment, non-school property tax revenues could be reduced by -\$794.9 million annually, assuming current tax rates.

Public Records Laws...PASSED

HB 163 & SB 80 Relating to Public Records by Sen. Steube (R, Sarasota) and Rep. Burgess (R, Zephyrhills)

Frivolous “gotcha” lawsuits against local governments for violations in public record request procedures have been an issue for several years now. Legislation was passed last Session that addresses the problem for State contractors but the issue remains a problem for many local governments.

SB 80 Relating to Public Records by Sen. Steube (R, Sarasota) requires a complainant to provide certain written notice to be entitled to attorney fees and allows more discretion to the judge in awarding fees or not. HB 163 Relating to Public Records by Rep. Burgess (R, Zephyrhills) also addresses the issue.

The bills require a court to award attorney fees and enforcement costs in actions to enforce public records laws if the court determines that an agency unlawfully refused access to a public record and the plaintiff provided written notice identifying the public records request to an agency records custodian at least 5 business days before filing the action.

However, if the court determines that a plaintiff requested records or filed the enforcement action based on an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass an agency, cause a violation of the public records law, or for frivolous purpose. The bill further specifies that monetary damages are not available in an action to enforce the public records laws.

This bill was approved by the Governor and immediately became effective.

Local Government Fiscal Transparency....FAILED

The House Ways & Means committee proposed two bills dealing with local government finance operations that did not pass.

HB 7063: Taxing Referendum (...did not pass either Chamber.)

- Referendum for tourist development, children's services & independent special districts may only be held during general elections and require 60 percent of the voters for approval.
- No millage in excess of the rolled-back rate is permissible UNLESS the taxing entity has NO excess unencumbered fund balances.
- The only exception is funding related to an "emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

This bill was heard as proposed committee bill and passed, in essence filing the bill, however it did not move again after that. It did not pass the House.

HB 7065: Fiscal Transparency (...passed the House, not the Senate.)

- Web-site posting of votes related to taxes or new tax-support debt.
- Property Appraiser and Special District must post millage rate levied by each taxing authority on its respective website.
- Expanded public notice of any proposed tax increase or new tax-support debt.
- Prior to authorizing debt, perform a prescribed debt affordability analysis.

This bill also started out as a proposed committee bill however it did continue to move and passed the House by a vote of 98 to 15. It died waiting to be heard in the Senate.

CRA's....FAILED

HB 13 & SB 1770 Relating to Community Redevelopment Agencies by Rep. Raburn (R, Valrico) and Sen. Lee (R, Brandon)

These bills sought to limit and or eliminate CRAs in various ways and were controversial in both chambers. The House bill was amended a few times and did pass by a vote of 78 to 37. The Senate bill narrowly passed its first committee but was actually voted down in committee by a vote of 5 to 2, something that rarely happens.

- Prohibited the creation of new CRAs on or after October 1, 2017 and Provided for the eventual phase-out of existing CRAs at the earlier of the expiration date stated in the agency's charter or on September 30, 2037, except for those CRAs with any outstanding bond obligations:

- However, phase-out may be prevented if a supermajority of board members serving on the board that created the CRA vote to retain the agency.
- Required each CRA to use the same procurement and purchasing processes as the creating county or municipality.
- Expands the annual reporting requirements for CRAs to include audit information and performance data and requiring the information and data to be published on the agency website.
- Provided that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law beginning October 1, 2017.
- Required a CRA created by a municipality to provide its proposed budget, and any amendments to the budget, to the board of county commissioners for the county in which the CRA is located by a time certain.
- Required counties and municipalities to include CRA data in their annual financial report.
- The bill provided a process for the Department of Economic Opportunity to declare a CRA inactive if it has no revenue, expenditures, and debt for three consecutive fiscal years.

Ride Sharing...PASSED

HB 221 Relating to Transportation Network Companies by Rep. Sprowls (R, Clearwater) and SB 340 by Sen. Brandes (R, St. Petersburg) was better known as “The Uber Bill”. After years of intense debate, it flew through both chambers this year and passed the House by a vote of 115 to 0 on April 5 and the Senate by a vote of 36 to 1 on April 19. It was signed into law by the Governor on May 9 and is effective July 1, 2017.

I recommend your attorney review the final legislation but it essentially preempts to the State the regulation of “Transportation Network Companies”. The bill:

- Provides that a transportation network company (TNC) driver is not required to register certain vehicles as commercial motor vehicles or for-hire vehicles;
- Requires a TNC to designate and maintain an agent for service of process in this state;
- Provides fare requirements;
- Provides that TNC drivers are independent contractors if specified conditions are met;

- Requires a TNC to implement a zero-tolerance policy for drug or alcohol use, subject to certain requirements;
- Requires a TNC to conduct a certain background check for a TNC driver after a specified period;
- Requires TNC drivers to comply with the nondiscrimination policy and certain applicable laws regarding nondiscrimination and accommodation of service animals, etc.

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