TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members
From: Staff
Date: March 21, 2014 Council Meeting
Subject: Legislative Matters

Introduction

At its last meeting, Council instructed staff to provide a report on House Bill (HB) 703 and Senate Bill (SB) 372. Council’s Gubernatorial Committee also recommended at its last meeting that staff put together a position statement on these bills. In addition, the Committee suggested the Council may want to consider advocating for: 1) state funding of regional planning councils to assist in eliminating an unfunded state mandate for carrying out work required by state statute, and 2) establishing quiet zones at Florida East Coast (FEC) railway grade crossings.

Following is a report on HB 703 and SB 372, and the rationale for supporting state funding of regional planning councils to carry out statutory mandates and expand the capacity of councils to assist local governments in carrying out their priorities. The issue of funding quiet zones at FEC grade crossings and a discussion of other local and regional impacts related to the All Aboard Florida project are included under Agenda Item 10.

Background

HB 703 and SB 372 propose changes to growth management, environmental permitting, and local government planning and approval processes. HB 703 is sponsored by Jimmy Patronis, R-Panama City. Recently, SB 1464 was offered as a companion bill by Wilton Simpson, R-Trilby. SB 372 is sponsored by Bill Galvano, R-Bradenton. Its companion, HB 241 is sponsored by Matt Gaetz, R-Shalimar. Both bills are provided in Exhibits 1 and 2.

As of this writing, HB 703 passed out of the House Sub-committee on Agriculture and Natural Resources. One hearing remains in front of the House Local and Federal Affairs Committee. The Senate companion bill, SB 1464 has not yet been heard in a committee. Four committee hearings remain.

SB 372 is being heard by the Senate Appropriations Subcommittee on Trade, Tourism and Economic Development. Three committee meetings remain. The House companion bill, HB 241,
is being heard by the House Economic Development and Tourism Subcommittee. Three committee meetings remain.

Analysis

**HB 703/SB 1464.** These bills primarily contain provisions for reduced regulation and greater incentives for continuing agricultural land uses and operations. They are considered by some as proactive economic planning and a continuation of growth management reform, a process which began in earnest four years ago. At the same time, these bills contain what some consider unnecessary and excessive provisions, which preempt local government “home rule” authority.

- Section 1 contains language that would retroactively preempt local government authority by prohibiting the enforcement of local government regulations, rules or ordinances, which protect wetlands, springs or stormwater and where modified, adopted, readopted or amended on or after July 1, 2013;

- Section 2 would retroactively preempt local government authority to require a supermajority vote on comprehensive plans and amendments, again impacting plans and amendments enacted from 2003 onwards; and

- Section 3 would prohibit local governments from rescinding a comprehensive plan amendment that allows for more intensive land uses on existing agriculture lands, regardless of whether the conditions agreed to by the land owner in order to receive the land use change are met.

The bill also contains some useful provisions providing agricultural landowners permitting incentives for participating in alternative water supply development and dispersed surface water storage (water farming) projects. It provides large landowners vesting and permitting incentives for participating in Developments of Regional Impact (DRIs) and long-term master planning under Chapter 163, Florida Statues. It also clarifies the rules and regulations to follow related to well construction criteria and standards and for mitigation bank permitting.

**SB 372/HB 241.** These bills contain provisions for removing DRI requirements for DRI-scale developments in seven additional counties and 20 additional municipalities. Currently, eight counties and 242 municipalities located within these counties (i.e., those with a cumulative population greater than 900,000 and at least 1,000 people per square mile of land) are exempt from the DRI process. The seven additional counties proposed include Brevard, Escambia, Lee, Manatee, Pasco, Sarasota and Volusia. These and other counties in the future that have a population of at least 300,000 and an average population of at least 400 people per square mile would be exempt from the DRI review process. Four-hundred people per square mile is a density of approximately one unit per three acres. The proposed language also removes the requirement that exempt development must be located within an urban service area.

**State Funding of Regional Planning Councils.** Councils perform several required activities under 16 different state statutes (Exhibit 3). The Governor appoints one-third of the voting members of the eleven regional planning councils around the state. State funding of around $2.5
million per year has been provided to regional planning councils since 1986 (Exhibit 4). During that time, Council has received about $250,000 per year from the state. During the last three years the Legislature has budgeted $2.5 million for regional planning councils. However, the Governor has vetoed regional planning council funding in each of the last three years. No definitive reason for the vetoes has been provided by the Governor’s office.

The legislative request for regional planning council funding this year is $2.5 million dollars. It is likely the Legislature will request funding for regional planning councils. It is also likely the Governor will veto the request. Defunding regional planning councils establishes another unfunded state mandate and allows the state to have equal representation and voting rights on the board without the same financial stake as its member local governments.

Conclusion

The agricultural industry is an important component of the state’s economy. HB 703 and its companion SB 1464 provide some useful provisions to further support this industry. The potential benefits of this bill are not reliant on the regressive portions of the bill, which unnecessarily diminishes local home rule authority. The bill should be considered unacceptable until the home rule preemption provisions are removed.

Arguments in favor of SB 372 and its companion HB 241 include:

1. Regional planning councils were created many years ago, when the state did not believe that local governments had the expertise to properly plan for their own future;

2. Today, counties have sufficient expertise and experience to conduct their own planning without the assistance of a regional planning council; and

3. SB 372 merely expands the scope of DRI exemptions for dense urban land areas established by SB 360 in 2009.

The primary rationale for review by regional planning councils is not that regional planning councils have more expertise than local governments; rather, it is that regional planning councils provide an unbiased assessment of the inter-jurisdictional impact of large-scale development in one jurisdiction on other jurisdictions. It is difficult for a local government with something to gain from a project to be impartial in its assessment of the project’s impact on another local government or regional resources.

In addition, the DRI process is the only process in Florida law that requires local governments to assure mitigation of impacts on adjacent local governments. The bill proposes nothing to replace this part of the DRI process which is critically important to local governments who will be impacted by development in a neighboring jurisdiction.

Finally, the bill eliminates the requirement that exempted development be located with an urban service area. This eliminates the encouragement of infill and redevelopment and encourages suburban sprawl in the countryside.
The bill should be considered unnecessary because it fails to: 1) advance sound growth management principles, 2) provide a replacement mechanism for addressing the impact of proposed development on nearby local governments, and 3) discourage suburban sprawl.

Restoring state funding of regional planning councils will eliminate an unfunded state mandate, restores financial parity for the privilege of being a voting member of the regional planning council, and will allow Council to improve service to its local government.

Recommendation

Council should authorize staff, in consultation with the Gubernatorial Committee, to draft letters for the Chairman’s signature regarding House Bill 703 and Senate Bill 372; and supporting a $2.5 million request for regional planning council funding. Council should also authorize and encourage its members to communicate directly to the Legislature and Governor about its position on regional planning council funding.

Attachments
A bill to be entitled

An act relating to environmental regulation; amending
s. 163.3162, F.S.; specifying the authority of
counties to enforce certain wetlands, springs
protection, and stormwater ordinances, regulations,
and rules; amending s. 163.3177, F.S.; providing vote
requirements for adoption of certain elements of local
government comprehensive plans and plan amendments;
amending s. 163.3194, F.S.; prohibiting local
governments from rescinding certain comprehensive plan
amendments; amending s. 373.236, F.S.; authorizing
consumptive use permit durations for certain projects
and developments; authorizing multiple commencement
dates for certain consumptive use permits; amending s.
373.308, F.S.; requiring delegated local governments
to follow certain criteria and standards for well
construction; preempting certain well construction
permitting regulations; amending s. 373.4136, F.S.;
providing that proof of insurance meets a certain
mitigation bank permit requirement; directing the
Department of Environmental Protection and water
managements districts to adopt specified rules;
amending s. 373.709, F.S.; requiring certain criteria
to be incorporated into regional water supply plans;
creating s. 403.0974, F.S.; providing conditions under
which the department required to establish certain
greenhouse gas performance standards, repeal certain rules, and submit rule revisions to the United States Environmental Protection Agency for approval; prohibiting the state from proposing or submitting certain plans; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund for specified purposes; providing for the deposit of certain funds into the account; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) of subsection (3) of section 163.3162, Florida Statutes, is amended to read:

163.3162 Agricultural Lands and Practices.—
(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(i) This subsection does not limit a county's powers to:

1. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, excluding any modification, readoption, or amendment approved on or after July 1, 2003.

2. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules pertaining to the Wekiva River...
3. Enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district.

As used in this paragraph, the term "wetlands" has the same meaning as defined in s. 373.019.

Section 2. Paragraph (f) of subsection (1) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the
inclusion of implementing regulations in the comprehensive plan
but rather to require identification of those programs,
activities, and land development regulations that will be part
of the strategy for implementing the comprehensive plan and the
principles that describe how the programs, activities, and land
development regulations will be carried out. The plan shall
establish meaningful and predictable standards for the use and
development of land and provide meaningful guidelines for the
content of more detailed land development and use regulations.

   (f)  Board-enacted all mandatory and optional elements of
the comprehensive plan and plan amendments shall be adopted by a
simple majority vote of the local government and shall be based
upon relevant and appropriate data and an analysis by the local
government that may include, but not be limited to, surveys,
studies, community goals and vision, and other data available at
the time of adoption of the comprehensive plan or plan
amendment. To be based on data means to react to it in an
appropriate way and to the extent necessary indicated by the
data available on that particular subject at the time of
adoption of the plan or plan amendment at issue.

1. Surveys, studies, and data utilized in the preparation
of the comprehensive plan may not be deemed a part of the
comprehensive plan unless adopted as a part of it. Copies of
such studies, surveys, data, and supporting documents for
proposed plans and plan amendments shall be made available for
public inspection, and copies of such plans shall be made
available to the public upon payment of reasonable charges for
reproduction. Support data or summaries are not subject to the
compliance review process, but the comprehensive plan must be
clearly based on appropriate data. Support data or summaries may
be used to aid in the determination of compliance and
consistency.

2. Data must be taken from professionally accepted
sources. The application of a methodology utilized in data
collection or whether a particular methodology is professionally
accepted may be evaluated. However, the evaluation may not
include whether one accepted methodology is better than another.
Original data collection by local governments is not required.
However, local governments may use original data so long as
methodologies are professionally accepted.

3. The comprehensive plan shall be based upon permanent
and seasonal population estimates and projections, which shall
either be those published by the Office of Economic and
Demographic Research or generated by the local government based
upon a professionally acceptable methodology. The plan must be
based on at least the minimum amount of land required to
accommodate the medium projections as published by the Office of
Economic and Demographic Research for at least a 10-year
planning period unless otherwise limited under s. 380.05,
including related rules of the Administration Commission. Absent
physical limitations on population growth, population
projections for each municipality, and the unincorporated area
within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth.

Section 3. Subsection (5) of section 163.3194, Florida Statutes, is amended to read:

163.3194 Legal status of comprehensive plan.—
(5)(a) The tax-exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

(b) A local government may not rescind a comprehensive plan amendment that authorizes land uses other than agricultural use if the land continues to be used primarily for bona fide agricultural purposes and qualifies for an agricultural classification under s. 193.461.

Section 4. Subsection (6) of section 373.236, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

373.236 Duration of permits; compliance reports.—
(6)(a) The Legislature finds that the need for alternative water supply development projects to meet anticipated public water supply demands of the state is so important that it is essential to encourage participation in and contribution to these projects by private-rural-land owners who characteristically have relatively modest near-term water demands but substantially increasing demands after the 20-year

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planning period in s. 373.709.

1. Therefore, where such landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of such projects, water management districts and the department may grant permits for such projects for a period of up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities, with the exception of any publicly or privately owned utilities created for or by a private landowner after April 1, 2008, which have entered into an agreement with the private landowner for the purpose of more efficiently pursuing alternative public water supply development projects identified in a district’s regional water supply plan and meeting water demands of both the applicant and the landowner.

2. Where landowners, individually or collectively, make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge which provide water resource benefits and alternative water supply development, the water management districts and the department may grant permits for such projects for a period of up to 50 years.

(b) A permit under paragraph (a):

1. May authorize the uses of the individual project participants to begin on different dates.

2. May be granted only for that period for which there is...
sufficient data to provide reasonable assurance that the
conditions for permit issuance will be met.

3. Such a permit shall require a compliance report by the
permittee every 5 years during the term of the permit. The
report shall contain sufficient data to maintain reasonable
assurance that the conditions for permit issuance applicable at
the time of district review of the compliance report are met.
After review of the said report, the governing board or the
department may modify the permit to ensure that the use meets
the conditions for issuance.

(c) This subsection does not limit the existing authority
of the department or the governing board to modify or revoke a
consumptive use permit.

(4) Water management districts and the department may
grant a permit for a period of up to 30 years for a development
of regional impact that is approved pursuant to s. 380.06 and
located in a rural area of critical economic concern as defined
in s. 288.0656.

Section 5. Subsection (5) is added to section 373.308,
Florida Statutes, to read:

373.308 Implementation of programs for regulating water
wells.—

(5) Delegated local governments must follow well
construction criteria and applicable standards adopted by the
department or water management district, and such criteria and
standards shall preempt additional local government well
construction permitting regulations.

Section 6. Paragraph (i) of subsection (1) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.—

(1) MITIGATION BANK PERMITS.—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(1) It can meet the financial responsibility requirements prescribed for mitigation banks. The applicant may satisfy this condition by submitting proof of insurance in a form approved by the department or water management district.

Section 7. By January 1, 2015, the Department of Environmental Protection and each water management district shall adopt rules to implement the amendment to s. 373.4136(1)(i), Florida Statutes.

Section 8. Subsection (9) of section 373.709, Florida Statutes, is renumbered as subsection (10), and a new subsection (9) is added to that section to read:

373.709 Regional water supply planning.—

(9) The water needs, water sources, water resource development projects, and water supply development projects...
identified in a long-term master plan adopted pursuant to s. 163.3245 or a master plan development order issued under s. 380.06(21) shall be incorporated into a regional water supply plan adopted pursuant to this section and are exempt from the analyses required under subsection (2).

Section 9. Section 403.0874, Florida Statutes, is created to read:

403.0874 Implementation of federal greenhouse gas regulations.-

(1) If the United States Environmental Protection Agency adopts a final regulation under 42 U.S.C. s. 7411(d) requiring the state to develop an implementation plan establishing greenhouse gas performance standards for existing industrial sources, the department shall establish such performance standards based on a system of emission reduction that has been adequately demonstrated for each existing industrial source in the state that is subject to greenhouse gas performance standards. The department shall take into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements.

(2) In determining the applicable greenhouse gas performance standard for an existing source, the department shall consider whether to provide for the application of less stringent performance standards or longer compliance schedules than those provided in applicable rules or emission guidelines, taking into consideration:

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(a) The unreasonable cost of control based on plant age,
location, or basic process design.
(b) The physical difficulties with or impossibility of
installing necessary control equipment.
(c) The impacts on electric reliability based on the
availability of diversified sources of electric generation.
(d) The cost of applying the performance standard
considering other environmentally beneficial projects undertaken
at the source in the past 10 years.
(e) The expected remaining useful life of the source.
(f) The economic impacts of applying the performance
standard, including any costs to the public or expected job
losses.
(g) Any other factors specific to a facility or class of
facilities that make application of a less stringent performance
standard or final compliance time significantly more reasonable.
(3) The state may not propose or submit any plan
establishing greenhouse gas performance standards for existing
sources that is inconsistent with this section.
(4) If any federal greenhouse gas regulation is declared
invalid, vacated, revoked, repealed, or withdrawn, the
department shall:
(a) Publish notice of the repeal of any substantively
identical department rule as soon as practicable, but no later
than 60 days after receipt of the declaration. The repeal shall
be effective upon publication of the notice.
(b) Revise applicable federally approved state implementation plan provisions as soon as practicable to reflect cessation of implementation of the applicable federal regulation and immediately submit such revisions for approval to the United States Environmental Protection Agency.

Section 10. Subsection (5) is added to section 403.709, Florida Statutes, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate the facility.

2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate.

3. The facility is deemed to be abandoned or was ordered to close by the department.

4. Closure is accomplished in substantial accordance with a closure plan approved by the department.

5. The department has written documentation that the
insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.

Section 11. This act shall take effect July 1, 2014.
A bill to be entitled
An act relating to developments of regional impact;
amending s. 380.06, F.S.; deleting certain exemptions
for dense urban land areas; revising the exemption for
any proposed development within a county that has a
population of at least 300,000 and an average
population of at least 400 people per square mile;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (29) of section
380.06, Florida Statutes, is amended to read:
380.06 Developments of regional impact.—
(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—
(a) The following are exempt from this section:
1. Any proposed development in a municipality that has an
average of at least 1,000 people per square mile of land area
and a minimum total population of at least 5,000; or
2. Any proposed development within a county, including the
municipalities located in the county, that has an average of at
least 1,000 people per square mile of land area and is located
within an urban service area as defined in s. 163.3164 which has
been adopted into the comprehensive plan;
3. Any proposed development within a county, including the
municipalities located therein, which has a population of at
least 500,000, that has an average of at least 1,000 people per
square mile of land area, but which does not have an urban
service area designated in the comprehensive plan; or

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Any proposed development within a county, including the municipalities located therein, which has an average population of at least 400 people per square mile and a population of at least 300,000 is located within an urban service area as defined in s. 153.3164 which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1. and 2. by using the most recent land area data from the decennial census conducted by the United States Census Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries recorded in accordance with s. 171.091. The office of Economic and Demographic Research shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the total population and density criteria. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that meet the criteria of subparagraphs 1. and 2. is effective upon publication on the state land planning agency’s Internet website. If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency

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shall maintain the municipality on the list and indicate the
year the jurisdiction last met the criteria. However, any
proposed development of regional impact not within the
established boundaries of a municipality at the time the
municipality last met the criteria must meet the requirements of
this section until such time as the municipality as a whole
meets the criteria. Any county that meets the criteria shall
remain on the list in accordance with the provisions of this
paragraph. Any jurisdiction that was placed on the dense urban
land area list before June 2, 2011, shall remain on the list in
accordance with the provisions of this paragraph.

Section 2. This act shall take effect July 1, 2014.
Regional Planning Council
Statutory Mandates

Chapter 163, F.S. Intergovernmental Programs
Chapter 186, F.S. State and Regional Planning
Chapter 253, F.S. State Lands
Chapter 260, F.S. Florida Greenways and Trails Act /
Chapter 282, F.S. Communications and Data Processing
Chapter 288, F.S. Commercial Development and Capital Improvements
Chapter 335, F.S. State Highway System
Chapter 339, F.S. Transportation Finance and Planning
Chapter 373, F.S. Water Resources
Chapter 378, F.S. Land Reclamation
Chapter 380, F.S. Land and Water Management
Chapter 403, F.S. Environmental Control
Chapter 419, F.S. Community Residential Homes, Confliction Resolution
Chapter 420, F.S. Housing
Chapter 427, F.S. Special Transportation and Communications
Chapter 985, F.S. Juvenile Justice, Confliction Resolution for Sites
Regional Planning Council State Appropriation
Fiscal Years 1985-86 to 2012-2013