

TALLAHASSEE WEEKLY REPORT

May 7-11, 2012

Supreme Court Rules on Term Limits

The Florida Supreme Court ruled this week that Florida's charter counties can impose term limits on their elected officials. This varied from an earlier opinion against term limits on sheriffs, court clerks, and other local constitutional officers. This week's ruling, emanating from cases in Broward and Sarasota counties, the justices unanimously agreed that term limits can be placed on county commissioners.

There are currently 10 Florida counties with term limits for commissioners: Broward, Sarasota, Brevard, Clay, Duval, Hillsborough, Orange, Palm Beach, Polk and Volusia. Miami-Dade County can join them if voters approve term limits that will appear on the November 6 ballot.

A 2002 ruling by the Court had struck down term limits for Jacksonville's elected officials, after voters had approved them for the sheriff, supervisor of elections, property appraiser, tax collector, and clerk of court. In this week's ruling, the Court stated that the 2002 ruling "undermines the ability of counties to govern themselves as the broad authority has been granted to them by home rule powers through the Florida Constitution".

Online Travel

Leon County Circuit Judge James Shelfer, who had previously decided the dispute between counties and online travel companies as to what tax should be paid by the latter, this week called for the Legislature and the Department of Revenue (DOR) to clarify the issue. In his ruling, Judge Shelfer said he could not apply the tax to the markup charged by companies like Orbitz and Expedia based on statutes that were not written to accommodate their business model.

The court case is a product of counties arguing that they should be able to tax these companies based on the marked-up, retail rate they charge customers, as opposed to the wholesale price paid by the companies. Shelfer had previously decided in favor of the companies, with the counties promising an appeal.

Elections

Florida elections officials announced this week that the number of potential noncitizens currently on the state voter rolls is approximately 180,000, which is much higher than

originally expected. After reviewing all the names, the state will then turn over smaller batches of verified names to local elections' supervisors, who will then contact the potential noncitizens and ascertain if they can lawfully vote. So far, 2,700 names have been sent to the counties, with nearly 2,000 of them in Miami-Dade County.

State Secretary of State Ken Dentzner, whom Democrats are accusing of engaging in voter suppression, said that the Obama Administration is blocking the federal Department of Homeland Security from sharing databases that could more easily show who is a rightful citizen and who is not. The access to these numbers was first requested in September 2011.

A similar effort in Colorado last year was undertaken, in which it was thought 16,000 potential noncitizen voters on the rolls, but the final number was found to be 104.

Affordable Housing

A number of affordable housing filed petitions this week for administrative court hearings to challenge the Florida Housing Finance Corp.'s (FHFC) scoring of their applications. The FHFC is a private entity that uses state and federal funds to administer housing programs.

The FHFC scores applications for the tax credits from developers of affordable housing projects on several factors, with tiebreaker points awarded based on the public amenities nearby a given project. The developers that have come forward are the challenging the FHFC's scoring of their projects' proximities to bus stops, medical facilities, libraries, and other public amenities.

It is possible that the hearings will take place this week.

Tourism

Later this month, Visit Florida will release the latest numbers on visitors to the state for the first quarter of 2012, but tourist development tax information gathered by DOR shows signs of growth. Palm Beach and Pinellas counties are amongst those showing the strongest numbers. The 40 counties for which numbers are collected show an average increase of nearly 9 percent over last March. Miami-Dade and Orange counties were not included in this report.

Visit Florida CEO Chris Thompson cited the opening of Legoland Florida in Lakeland, as well as the addition of several new attractions at Walt Disney World and Universal Studios, as reasons why the state is well-positioned to continue posting strong numbers.

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Citizens Property Insurance

A committee made up of members of Citizens Property Insurance Corp's Board of Governors discussed the possibility of slowly phasing-in the 30 percent statewide rate hike during a meeting this week. Citizens has discussed decoupling rates for new policies from existing policies, which would set aside a 10 percent cap on annual rate increases put in place three years ago by the Legislature.

As it relates to Miami-Dade County, homeowner's premiums would go up by 95 percent. House Majority Leader Carlos Lopez-Cantera, chair of the Miami-Dade Legislative Delegation, and Senator Anitere Flores wrote letters to their former House colleague, Tom Grady, who is currently serving as the Interim Director at Citizens expressing their displeasure at the plan.

Citizens' full Board will put together rate requests at their June and July meetings for submittal to the Office of Insurance Regulation.

Senator Mike Fasano, who is termed-out this year and running for a House seat, has promised to sue Citizens if the 10 percent cap is removed.

Attached, please find documents from Citizens' meeting in which uncapping the rates was discussed.

Governor's Office

Earlier this week, Steve MacNamara resigned as Governor Scott's Chief of Staff, effective July 1. He will be replaced by Adam Hollingsworth, a Jacksonville resident who had served as Chief of Staff to former Jacksonville Mayor John Peyton.

MacNamara resigned after a week's worth of news reports surrounding decisions made while serving as Chief of Staff in the Senate, personnel decisions in the Governor's office, and a complaint filed before the Ethics Commission alleging that he used state staff to update his resume when applying for a position at a university in Montana. While he has denied wrongdoing, MacNamara stated he did not want to be a distraction to the Governor and his agenda.

FCAT

This week, the state Board of Education unanimously approved lowering the standard score for the writing portion of the FCAT from a 4.0 to a 3.0. The writing section, which is graded on a scale from 0.0 to 6.0, was raised last year from 3.5. This led to students' papers being graded more thoroughly this year, with a lower margin of error for spelling and grammatical errors. Last year, 81 percent of fourth graders earned a 4.0, a number which dropped to 27 percent this year. The Board considered lowering the standard to 3.5, which would have left 48 percent with a passing score, but decided on the 3.0 number, which was reached by 81 percent of fourth graders.

Gerard Robinson, the state's Education Commissioner, acknowledged his department was at fault, as it should have done a better job of informing teachers and schools of the what the change in scoring would mean.

Teachers and parents on the Board's conference call criticized the state's emphasis on the FCAT, and the Department of Education's problems in outlining the details of the new standards to its stakeholders.

Foreclosures

While nationwide foreclosure activity fell by 14 percent in April, Florida's rate saw a 26 percent increase over the same month last year. Florida showed one foreclosure for every 364 housing units, the third highest rate in the country, behind California and Nevada, state's which, incidentally, showed a decline in their foreclosure rate this month.

The report, created California-based RealtyTrac, puts the blame squarely on the state's judicial foreclosure process, which the other two aforementioned states do not have.

Amongst the state's 20 largest metropolitan areas, Miami and Tampa showed the largest increases, at 38 and 59 percent, respectively.

Unemployment

Florida's unemployment dropped to 8.7 percent last month, down from 9 percent in March, based on numbers released Friday by the Department of Economic Opportunity. Florida saw a net increase of 52,600 jobs, despite a loss of 2,700 non-agricultural jobs. The state's workforce lost 28,000 workers from March, despite the state's working-age population increasing by 17,000 people. People who drop out of the workforce are not counted in the unemployment numbers, which currently stands at 804,000 Floridians.

Political

- Miami Beach Commissioner Jonah Wolfson announced this week that he would be dropping his bid for the Florida House seat that once belonged to Richard Steinberg. (Formerly 106, now 113). Instead, his colleague on the Commission, Deede Weithorn has indicated that she will be running for the seat.
- State CFO Jeff Atwater endorsed former Representative Aaron Bean this week for a state Senate seat based in Duval County. After redistricting, this seat falls in line with the one being vacated by termed-out Senator Stephen Wise. Bean, who served in the House from 2000-2008, is being challenged in the Republican primary by Representative Mike Weinstein, who has received the support of several Duval County elected officials and business leaders.

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May 21-25, 2012

Port of Miami Deep Dredge

The Florida Department of Environmental Protection (DEP) issued the permit this week that will allow the U.S. Army Corps of Engineers to dredge and deepen Government Cut up to 50 feet. This comes a month after a settlement was reached by local stakeholders with environmental groups. The project will now be put out to bid, with construction set to begin early next year.

The deeper depth will allow the Port of Miami to compete for larger vessels that are expected to use the Panama Canal when its widening project is completed over the next year.

The environmental groups, concerned that Biscayne Bay would be left scarred due to blasting and digging, dropped an administrative challenge after Miami-Dade County agreed to spend \$2.3 million on restoration and monitoring.

Greater Miami Chamber of Commerce

OIA attended the Greater Miami Chamber of Commerce's "Post-Session Wrap Up" this week. House Majority Leader Carlos Lopez-Cantera provided the opening remarks, and Representative Jeanette Nunez, Dwight Bullard and John Patrick Julien provided an update on education, healthcare and economic development.

The members of delegation touted their successes, including the preservation of funding for county projects in yet another tight budget year. Of the members present, Representatives Nunez and Julien will be back in the Florida House next year. Representative Bullard is leaving his seat early to run for the state Senate, and Leader Lopez-Cantera is termed-out and running for Property Appraiser.

Trade Mission to Spain

Governor Rick Scott led a trade mission to Spain this week, in an effort to boost relations and business development between Florida and the Spanish government. The Governor noted that despite Spain's financial crisis and high unemployment, its banks are looking to diversify. Nearly a quarter of Spaniards are currently unemployed. The Governor also stated companies such as The ACS Group, which is currently involved in a local highway construction project.

The Governor's trip also came with a mishap, by mentioning to Spanish King Juan Carlos the monarch's recent trip to Botswana, which included hunting elephants. The King was injured on the hunting trip, and his public standing was hurt by going on an expensive trip during a financial crisis. The King was temporarily unable to fulfill his official duties following the trip, and apologized publicly for the hunting trip. Video shows Governor Scott telling the King, "I've ridden elephants, but I've never tried to shoot one".

Budget Update

The Revenue Estimating Conference reported this week that the state's revenue is projected to exceed expenditures by \$1.12 billion for the upcoming fiscal year, which begins on July 1. Since January, general revenue has exceeded estimates by about \$200 million, according to the Department of Revenue's monthly reports.

News of these numbers comes at a time when the three major credit rating agencies are scrutinizing the state's finances to determine whether to maintain its AAA credit rating for general obligation bonds. Fitch Ratings released a preliminary note, upholding the current rating with a negative outlook, praising legislators for their fiscal discipline but noting warning signs such as a lawsuit challenging the mandatory 3 percent pension contributions for government employees.

Medicaid Billing Lawsuit

Below, please find an update on the lawsuit (directly from the FAC website), of which Miami-Dade County is one of the plaintiffs, filed against the state with regards to HB 5301, the Medicaid billing issue we have discussed at length in the past:

Rule Making

AHCA announced last Friday, May 11th that they would have the first rule making workshop regarding HB 5301 on June 1st. The workshop will be held on draft rules for the Medicaid Bill (HB 5301) as well as the 'intent to reside' rule that was originally crafted in 1977.

As FAC has traveled to each county hearing your concerns on AHCA's billing practices we will be sharing with AHCA many of the questions and issues that have been relayed to us in hopes that some of them will be considered as AHCA is drafting the rules.

FAC will be attending the rule workshop and will forward any and all information to you as soon as it is available.

DCF / Florida System

This week FAC forwarded the MOU and exhibits counties must complete in order to have access to DCF's Florida System for Medicaid billing and proof of residency. All of those documents can be found at www.FACMedicaid.com. Any questions regarding the MOU should be directed to DCF:

Bruce Belrose, Chief, Operations and Research, ACCESS Program Office

Phone: 850-717-4083

Email: bruce_belrose@dcf.state.fl.us 

County Visits:

AHCA county visits continued this week and most of those that remain outstanding have been scheduled at this point. FAC is sending a staff person to each meeting to ensure that each county is hearing the same information and to bring back your comments and concerns to be taken into consideration for the rule making and legislation for 2013.

For more information on the implementation of HB 5301 please visit our website at www.FACMedicaid.com or call the office and someone can assist you.

Elections

Former Secretary of State Kurt Browning, who resigned earlier this year, said this week that Governor Scott urged the state elections department to identify and remove non-U.S. citizens from the voter rolls. Browning says the Governor asked him whether or not non-U.S. citizens were registered and if these people were voting, with an explanation that those who register to vote and falsely claim they are citizens can be charged with a crime.

The state has compiled an initial list, compiled by comparing driver's license information with voter registration data, showing that as many as 182,000 registered voters were eligible to be in the country, but ineligible to vote.

Upon the Governor's initial request, Browning, who resigned to run for local office in Pasco County, decided against telling local elections officials to avoid a media flurry. The state then spent months trying to gain access to a federal database that tracks non-U.S. citizens in the country, but was denied by the U.S. Department of Homeland Security.

Florida law requires voters to be U.S. citizens and live in the state. The state does not allow people to vote if they are convicted felons and have not had their civil rights restored.

Political

- Senator Ronda Storms announced she will be vacating her seat to run for Property Appraiser in Hillsborough County. Senator Storms is a former county commissioner, first elected to the Senate in 2006. It is rumored that former Senate President Tom Lee may run for her seat, which he held from 1998-2006.

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May 28-June 1, 2012

Elections Law

A federal judge temporarily blocked portions of Florida's new election law (passed in 2011) that place restrictions on voter registration drives on the grounds that the provisions were impractical and served little purpose. United States District Judge Robert Hinkle ruled that the groups challenging the provisions are likely to prevail in arguing the restrictions violate constitutional voting rights.

One of the provisions blocked by the judge requires groups or individuals signing up voters to submit their registration forms to election officials within 48 hours of collecting them, while previous law allowed up to 10 days. Other provisions impose "burdensome record-keeping and reporting requirements", according to Judge Hinkle.

The Department of State, which oversees the state's elections, is looking at its options, which could include anything from an appeal or resolving the judge's concerns via administrative rules.

Hurricane Season/Citizens

Hurricane season begins today, and runs until November 30, despite Tropical Storm Beryl having already hit the Jacksonville area. The beginning of hurricane season is coinciding with the issue we reported on last week regarding Citizens Property Insurance and its rates.

Republican legislators, many from Miami, have criticized a plan by Citizens to increase rates for new policies above the 10 percent cap that was put in place by the Legislature in 2009. The Governor, who was in Miami today for a hurricane preparedness press conference at the Miami-Dade County Emergency Operations Center, has not taken a position on the matter.

Citizens' position is that the limit currently in place is on rate increases, and since only new policies would get the higher rate, it is an "original" rate, not an "increase". The Citizens Board is going to vote soon on this "decoupling" of rates for new rates from existing policies.

Aside from the debate on rates, Citizens is also holding meetings to discuss plans to "depopulate", or reduce the number of policies it writes. This includes a "Depopulation Summit" that was held today in Tampa. Citizens was originally created to be the insurer of last resort, but it is now the largest insurer in the state, with nearly 1.5 million policies

currently in place. This move to depopulate is a result of Governor Scott's fear that Citizens' nearly \$500 billion in risk leaves the rest of the state's homeowners vulnerable to assessments after a major storm. Citizens has built a surplus of \$6 billion, with coverage from the Florida Hurricane Catastrophe Fund (commonly known as The Cat Fund) adding another \$6.9 billion. Citizens has also bought \$1.5 billion in private reinsurance. These numbers combined are \$1.4 billion less than Citizens' current maximum coverage.

Also related to hurricane season, please find the "Letter to the Editor" below from state CFO Jeff Atwater, which appears in newspapers across the state today:

Baseball and hurricane preparedness have a lot in common: You have to cover all your bases to succeed. As Floridians, we all need to be prepared for hurricane season, which starts today, and National Hurricane Preparedness Week is a great time to ensure that we've covered all our bases, basically, insure, secure and prepare to recover.

Protecting your home base isn't just about hardening your home physically. It's just as important to prepare financially for a disaster. The top three reasons homeowners strike out when it comes to insurance claims are insufficient documentation, lack of adequate insurance coverage and failure to retain proof of damage. Failing to prepare financially could mean thousands of dollars of damage you will have to pay from your own pocket.

With hurricane preparedness, you make it to first base by ensuring you have adequate coverage for your property.

Tagging second base means securing important documents and rounding third base is having the ability to recover after a storm.

Taking all of these steps will help you protect your home base this hurricane season.

The Department of Financial Services, Division of Consumer Services' website, www.MyFloridaCFO.com/consumers, offers videos, brochures, resources and tips, along with a Disaster Preparedness section that includes a home-inventory checklist. Should a tropical storm or hurricane take aim at our state, we will activate a special consumer helpline, 1-800-22-STORM, to assist victims with insurance matters.

Many quick and confusing decisions must be made in the aftermath of a disaster. Don't get scammed. Remember to ensure that the company or individual you are considering dealing with is licensed in Florida, never make advance payments and never pay in full until the work is complete. Score a home run this hurricane season. Take the necessary steps to protect your family, home and business now.

Jeff Atwater, state chief financial officer, Tallahassee

Captive Insurance

Governor Rick Scott was in Miami today for a ceremonial bill signing for HB 1101, an insurance bill containing provisions which paves the way for captive insurance companies to do business in Florida. The signing took place at the Beacon Council, which was instrumental in pushing the bill.

Chairman Joe Martinez was the prime sponsor of a resolution, passed by the Board of County Commissioners and included in our 2012 Legislative Agenda, which advocated for passage of captive insurance legislation.

Representative Jeanette Nunez and Senator Miguel Diaz de la Portilla filed stand-alone bills on the issue. The House bill passed on the floor, but the Senate version died on the calendar of bills waiting to be taken up on the floor. As such, the provisions of the bill were amended onto HB 1101, a broader insurance package.

The Governor officially signed the bill into law on April 24.

Pollution Limits

U.S. District Judge Robert Hinkle, mentioned above in the elections law section, granted the U.S. Environmental Protection Agency (EPA) a nearly six month extension on a deadline to establish new federal water pollution limits in Florida.

Judge Hinkle warned the EPA not to expect any additional extensions. This issue involves setting numeric background limits for nutrients, including phosphorus and nitrogen compounds. The nutrients come from a variety of sources, including fertilizer, livestock operations, industry, and utilities.

Governor Rick Scott had signed HB 7501 into law in February, which exempts the proposed state rules from ratification by the Legislature so that they can be sent directly to the EPA for review.

The environmentally centered law firm Earthjustice is representing several stakeholders in filing the objection to the extension, including Florida Wildlife Federation, St. Johns River Keeper, the Conservancy of Southwest Florida, the Sierra Club, and the Environmental Confederation of Southwest Florida.

Political

- State Representative Rachel Burgin officially filed for the Senate seat being vacated by Senator Ronda Storms, who announced last week she was not seeking reelection to run for Hillsborough County Property Appraiser. Burgin will be challenging former Senate President Tom Lee, who is looking to reclaim the seat he held before her termed-out and Storms was elected. Representative Rich Glorioso, who is termed-out and running for Hillsborough County Elections Supervisor, was thinking of running for the Senate seat, but will not be doing so. Representative Burgin's campaign was quickly endorsed by fellow House members Representatives Erik Fresen, Daniel Davis, and Charles Van Zant.
- Incoming Senate President Don Gaetz has endorsed Tom Lee in the aforementioned race.

- Mark Weithorn, the husband of Miami Beach Commissioner Deede Weithorn, has filed to run for the Florida House seat that was formerly held by Representative Richard Steinberg, who resigned earlier this year. Miami Beach Commissioner Jonah Wolfson had previously filed for the seat, which used to be district 106 and is now 113 after redistricting, but has since decided against doing so. It was thought that Commissioner Weithorn would file for the seat, instead of her husband. Adam Kravitz, the founder of dating website “JDate”, has also filed for the seat and put \$250,000 of his own money into the campaign.
- First term State Representative Jeff Brandes filed today to run for the open Senate seat, likely in the seat being vacated by termed-out Senator Dennis Jones, in which he would then challenge fellow House member Jim Frishe in the Republican primary. If this primary takes place, it is expected to pit future Senate President candidates against each other, as Senator Jack Latvala is close to Frishe, and Brandes is an ally of Senator John Thrasher. Latvala and Thrasher are vying to preside over the Senate after the 2106 elections. Frishe and Latvala have also said they may change districts, with Latvala already challenging Brandes’ decision to run in the press.