

TALLAHASSEE WEEKLY REPORT

September 3-7, 2012

State Budget

A new budget forecast released this week by state economists shows that the state is expecting to bring in enough money in 2013 to meet its needs for public schools and health care programs while leaving \$1 billion for reserves. The three-year forecast will be presented to legislators next week, at the September 12 meeting of the Joint Legislative Budget Commission. These numbers show a turnaround from recent years when the state has faced large budget shortfalls.

A \$4 billion shortfall in 2011 prompted a round of layoffs and a move to force public employees to pay 3 percent of their salaries to cover part of their pension costs. The \$70 billion state budget that took effect in July included a \$300 million cut to state universities.

Rep. Denise Grimsley, the House budget chair, and a candidate for the state Senate in November, noted that the new forecast does not say that the state will suddenly have a budget surplus.

The economists have projected that there is enough money to cover increases in programs, such as Medicaid, while also setting aside \$500 million to help bolster the state's massive pension plan. Losses in the stock market during the recession mean the Florida Retirement System does not currently have enough money to cover all current and future benefits for public employees. It is currently about 13 percent underfunded, though it is still considered "healthy" by many financial experts.

The absence of a budget gap presumably makes it easier for Governor Scott to push ahead with his aggressive tax-cutting plans, including eliminating the state's corporate income tax. As part of his annual budget exercise, the Governor had already asked agencies to propose budgets with a 5 percent cut.

In the subsequent section regarding the pension lawsuit, please see further mention of the state budget.

Pension Lawsuit

Earlier today, the Florida Supreme Court questioned whether the Legislature violated a contract with 572,000 teachers, prison guards, nurses and other public employees when it began requiring them to contribute 3 percent of their retirement plans. The suit, which was led by the Florida Education Association, argued that requiring public employees to

contribute to their employees was the equivalent to a breach of contract because those workers accepted their positions with the promise of certain benefits.

In 2011, facing a \$3.8 billion budget gap, the legislature made significant changes to the state's retirement system, which is used by all state and county employees, as well as certain cities. In addition to the contributions, they increased the retirement age and lowered benefits for employees in the deferred retirement system.

If the Supreme Court were to uphold the lower court's ruling against the state, state and local governments will have to reimburse workers in the Florida Retirement System (FRS), and cover the resulting budget gaps. The state has already taken over \$900 million from employees, with the number expected to hit \$2 billion by June 30, 2013, which would mark the end of the current fiscal year. This is significant because, as mentioned earlier, state economists have predicted that revenues are likely to meet expectations for the first time in years.

Should the ruling be upheld, public employees under the FRS could see a 3 percent increase in their paychecks and cost of living adjustments could be resumed.

Citizens

Citizens Property Insurance Co. officials took steps this week towards approving a plan that would lend private insurers up to \$350 million in surplus funds to take over some of its policies. The plan, however, is already receiving pushback from critics. Members of Citizens' depopulation committee approved the plan, in principle, but some members expressed concerns about the details of contracts with private companies.

Under the program, Citizens would provide loans to companies that meet financial requirements, with the size of the loan contingent on the amount of risk they take on. The risk would be determined by the amount of premium paid into the Florida Hurricane Catastrophe Fund for each policy. Citizens' staff members said tying the loans to the Cat Fund calculation would entice companies to take on more risk and prevent the cherry-picking of safer policies, usually those found further inland. The loan would be paid off over 20 years.

Governor Scott, and some legislators, has urged Citizens to find ways to reduce its policy count, thereby reducing its exposure and the potential for assessments on non-Citizens customers after a large hurricane or series of storms.

Other legislators, including many Republicans, have fought against those efforts, including working for the defeat of a bill this year that would have allowed out-of-state companies to take over Citizens policies. They also criticized measures that have reduced coverage of secondary structures and imposed a rigorous inspection program on wind mitigation credits that usually have resulted in a reduction in credit and an increase in premium. One of those Republican legislators, Frank Artiles, a member of our local delegation, continued his battle this week, reading a letter to the committee admonishing them for planning to loan out funds from their surplus and using what he

described as a “rushed” process to do so. He also questioned whether Citizens had statutory authority to lend money.

The final details of any plan would have to be agreed to and voted upon before the next Citizens board meeting in December.

Early Voting

United States Attorney General Eric Holder announced this week that he will accept Florida’s early voting plan for five counties covered by the federal Voting Rights Act. Holder filed his response Wednesday with a three judge panel in Washington. This same panel had previously ruled that a Florida law reducing early voting from 12 to 8 days violated the federal law in the five covered counties: Hillsborough, Collier, Hendry, Hardee and Monroe.

The judges indicated that they would approve a plan that would still provide 96 hours of early voting, the same as under Florida’s previous law, over just 8 days.

Monroe County Elections Supervisor Harry Sawyer, who has been a critic of the state’s early voting changes, said this week that having 12 hour days is an unfunded mandate on his office.

Governor’s Office

Brian Burgess, the chief spokesman for Governor Rick Scott, is leaving the governor’s office to take on the same position with the Republican Party of Florida. Burgess will be replaced by Melissa Sellers, who performed the same function under Louisiana Governor Bobby Jindal.

Prior to joining the governor’s office, Burgess served as a consultant with the public relations firm that Governor Scott hired, prior to running for office, to campaign against President Obama’s national health care law. He later joined the Governor’s campaign.

Nursing Homes

Federal investigators say Florida officials are violating federal law by unnecessarily holding hundreds of children with disabilities in nursing homes. The Department of Justice sent a letter to state Attorney General Pam Bondi this week saying that it visited six nursing homes across the state and identified numerous children who didn’t need to be in nursing homes and “would benefit from moving home with their families or other community settings”.

Federal official concluded that the state had made it difficult for children to access medical services that would allow them to move home. According to the letter, Florida’s system has led to “unnecessary segregation and isolation of children, often for many years, in nursing home facilities”.

Cruise Industry

A study released this week by the Cruise Lines International Association shows that the Florida cruise industry generated 131,000 jobs and wages of nearly \$5.8 billion statewide. Cruises accounted for \$6.7 billion in total economic impact from direct spending.

PortMiami, Port Everglades, and Port Canaveral handled nearly 6 million embarkations or 60 percent of all U.S. cruise embarkations. Miami-based lines Carnival, Royal Caribbean, and Norwegian Cruise Lines operate three-fourths of the North American industry's cruise capacity.

Over the last four years, PortMiami has welcomed approximately 4 million cruise passengers annually. It has an economic impact of over \$18 billion, a significant amount in the industry.

TALLAHASSEE WEEKLY REPORT

September 10-14, 2012

State Budget

Amy Baker, the state's chief economist, informed the Joint Legislative Budget Commission (JLBC) this week that revenue projections for next year show no budget gap. Economists predict a \$71.3 million cushion, even with budgeting for \$1 billion in reserves.

Baker has been the leading economist for six years, and commented: "This is probably the best of the six but it just takes some of the pressure off. It doesn't say everything is great and I can fully fund things that we have reduced in the past."

Since the recession hit Florida near the end of 2006, lawmakers responded to shortfalls and budget gaps by cutting spending, laying off workers and eliminating services. The Legislature raised taxes and fees in 2009 and cut billions of dollars in spending the past two years. The current budget contains about \$3 billion fewer dollars than the one passed in 2006. The state's gross domestic product grew 0.9 percent in 2010, and 0.5 percent last year. The state is expected to carry forward \$1.5 billion from the current budget into the next one.

Baker warned that while the growth in revenue gives lawmakers greater flexibility when they write next year's budget, they should be warned about "Black Swans", the name economists give to uncertainties. These can include a natural disaster, congressional standoff on economic policy or economic problems elsewhere in the world.

Senate President-Designate Don Gaetz also participated in the meeting, and noted that these projections do not include potential cost overruns in the Medicaid program.

Prison Health Care Privatization

Also at the aforementioned JLBC meeting, the panel approved a proposal by Governor Scott to spend nearly \$58 million in order to privatize prison health care operations by January. This move would privatize approximately 3,000 jobs.

Senate Democratic Leader Nan Rich joined other members of her party in questioning the record of private companies, and whether the JLBC could legally approve this move, in lieu of approval from the entire Legislature. This past session, the Senate defeated a proposal to privatize prisons in South Florida. Attorneys for the Department of Corrections insisted that the state can move ahead with the privatization plan.

The American Federation of State, County, and Municipal Employees has said they would move quickly to file a lawsuit blocking the privatization from going forward.

Stand Your Ground Task Force

Members of the task force that was empaneled to review the state's "Stand Your Ground" law on the heels of the Trayvon Martin death expressed support this week for the statute's core provision that deadly force can be used if necessary to prevent death or serious injury.

The group, the Task Force on Citizen Safety and Protection, must present their recommendations to the Governor and Legislature upon conclusion of their work. Okaloosa County Sheriff Larry Ashley called the idea of redefining the law's "duty to retreat" provision "incomprehensible". The Reverend R.B. Holmes, who vice-chairs the committee, called it a "Christian virtue". Circuit Judge Krista Marx said the fact that 25 other states followed Florida's lead in establishing such a law "speaks volumes".

If anyone is interested in documents pertaining to this meeting, please feel free to contact our office.

Early Voting

The Obama administration formally signed off on a proposal this week that will limit early voting days in five Florida counties covered by the federal Voting Right Acts. Voters will likely be limited to no more than eight days voting during this year's crucial presidential election.

The decision ends a lengthy battle over a controversial election law passed by the Legislature last year, even though a separate lawsuit filed by Congresswoman Corrine Brown is still pending in Jacksonville federal court.

Voter Rolls

The Department of State announced Wednesday that it used a federal immigration database to verify 207 voters are not citizens. Earlier this year, the state had suspected that over 2,600 voters were ineligible and had asked elections supervisors to purge those on the list. Despite the disparity in the expected number, officials still feel the screening process was a success since it yielded ineligible voters.

Under an agreement entered into with voting groups this week, the state will contact the remaining 2,400 voters and let them know they are still eligible to vote.

Foreclosure

RealtyTrac, the California based company we have reported on in previous reports, put out a report this week showing that foreclosure activity in Florida jumped 16 percent last month over August 2011, in contrast to the nationwide numbers, that showed a 15 percent drop.

There was one foreclosure filing for every 328 housing units in Florida, the second highest rate in the country, behind Illinois' one in 298 rate.

Greater Miami Chamber of Commerce

OIA attended the Greater Miami Chamber of Commerce's "2012 Elections Forum" earlier this week. The meeting included a presentation by Miami-Dade Public Schools Superintendent Alberto Carvalho regarding the school's general obligation bond issue that will appear on the ballot.

Also at the meeting, were representative from around the state to explain the various constitutional amendments. Presenters included Representative Michael Bileca and Dr. Robert Cruz, Miami-Dade's Chief Economist.

The materials for this meeting appear in a large file. If anyone wishes to review them, please feel free to contact our office.

Virtual School Investigation

The Florida Department of Education is investigating K12, which is the nation's largest online educator, over allegations the company uses uncertified teachers in violation of state law and has asked employees to cover up the practice. K12 officials asked state-certified teachers to sign class rosters that included students they hadn't taught, according to documents that are part of the investigation.

In another instance, a K12 manager instructed a certified teacher to sign a class roster of more than 100 students, according to documents obtained by the Florida Center for Investigative Reporting. Only seven names on the list were recognized.

The investigation is ongoing, and neither K12 officials, or the Department of Education's Office of Inspector General is commenting.

School Funding

The Florida Supreme Court declined this week to consider a school funding case, Haridopolos v Citizens for Strong Schools. The First District Court of Appeal (DCA) decided not to block a trial on the suit, which alleges that state is violating the Florida Constitution by failing to adequately fund schools. The DCA had also asked the Supreme Court to decide whether the Constitution provides sufficient standards for a court to determine the funding issue and provide relief. The Court denied a Petition for Review.

Earlier this year, Senate President Mike Haridopolos had urged the Supreme Court to rule on the DCA's question. The issue arose in a lawsuit by four parents and two advocacy groups, Citizens for Strong Schools and Fund Education Now.

The plaintiff's argument relies on Article 9 of the Constitution, which states "Adequate provision shall be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education".

The Supreme Court's decision to not take up the issue provides the plaintiffs with an opportunity to argue their case before a trial judge.

TALLAHASSEE WEEKLY REPORT

September 17-21, 2012

Miami International Airport

Governor Rick Scott sent a letter to United States Homeland Security Secretary Janet Napolitano this week asking her to come visit Miami International Airport (MIA) and see for herself that it needs more Customs and Border Protection (CBP) staffers. The Governor wrote that President Obama's executive order designed to increase U.S. travel and tourism should be a boon for Miami. He also added that insufficient staffing is resulting in bottlenecks and causing foreign visitors to be separated from their luggage, forcing many to rebook on later flights.

According to the letter, MIA has more international flights than any airport in the country, and not making any changes could damage Florida's image and international business competitiveness. Over 1,000 passengers go through customs here every day.

Attached, please find a copy of the letter.

Unemployment

Florida added 23,200 nonagricultural jobs in August, but the unemployment rate did not change as it stayed at 8.8 percent, according to numbers released this week by the state's Department of Economic Opportunity. The number of unemployed workers remained at 818,000, which is the same as in July. There have been 77,800 jobs added during the last 12 months, a rate of 1.1 percent, just behind the national rate of 1.4 percent.

There were 5,200 public sector jobs lost last month, primarily in local government, but the Governor focused on the 28,000 private sector jobs that were added, saying "this increase in new jobs is proving that the decisions we're making here in Florida are pointing our state in the right direction".

Although the size of the working age population grew by 20,000 to 15,458,000 in August, the size of the labor pool shrank by 10,000 to 9,261,000. This shrinking labor pool has diminished the Governor's positive outlook on the unemployment rate, which has declined 1.7 percent over the year. A report from state economists shows the unemployment rate would have been 9.8 percent in July if labor force participation had remained at December 2011 levels.

Citizens Insurance

Homeowners facing large premium increases and lawmakers asked state regulators to deny Citizens Property Insurance Corporation's request to raise the average statewide premium for standard homeowner coverage 12 percent. This took place at a meeting held in Miami earlier this week.

State Senator Mike Fasano, a vocal critic of Citizens' increases, called the rate request "the epitome of arrogance".

Citizens CEO Barry Gilway defended the rate request, stating it must be able to pay claims in the event of a catastrophic storm without relying on assessments to policyholders. Currently, Citizens policyholders can be assessed up to 45 percent after a storm, should it be large enough to wipe out its \$6 billion in surplus and its \$8.4 billion in state-backed and private reinsurance. If the hurricane is not big enough to exhaust those assessments, non-Citizens policyholders would receive assessments as well.

Citizens requested a 11.1 percent average statewide increase for coastal homes, and a 12 percent average statewide premium increases for more inland areas. Although the base rate on annual increases is capped for Citizens at 10 percent, premiums can rise higher than that because of additional payments for the Florida Hurricane Catastrophe Fund reinsurance and because optional sinkhole coverage is not subject to the cap.

Florida Department of Transportation

The Florida Transportation Commission's annual review of the Florida Department of Transportation (FDOT) found that the department satisfied 90 percent of the measures used to evaluate performance. FDOT lost points for controlling construction costs and improving capacity on roadways.

FDOT Secretary Ananth Prasad used his response to the report to thank the FDOT district secretaries. FDOT is responsible for roads, ports and rails, sidewalks and trails. The seven district secretaries manage transportation projects in their respective regions and oversee about \$5 billion annually from the state Transportation Trust Fund.

TALLAHASSEE WEEKLY REPORT

September 24-28, 2012

Pension

The Leroy Collins Institute, a think-tank, released a report this week showing that systematic problems plague many Florida municipal pension plans. The report found that a smaller workforce is supporting a growing number of retirees while a sluggish economy makes it harder for the plans to replenish their funds to cover future obligations.

The report examined data from 2005 through 2011, and includes 492 local government pension plans. A separate Collins study from 2011 found that a third of the pension plans in Florida's 100 largest cities were funded at less than 70 percent. The current study concludes that an economic downturn contributed to the problem but that the underfunding began before the 2007 recession.

The report also notes that 2010 was the first year in recent history when the amount paid to retirees exceeded contributions. The study was conducted by David Matkin, a Public Administration professor at Florida State University, who said that the trend shows an outline of a budget crunch developing for many municipal governments. Professor Matkin says the underfunding has its roots in the early 2000s. Governor Jeb Bush, who was in office at the time, had campaigned to improve pension benefits for police and firefighters. The first bill he signed as Governor tied taxes on property insurance premiums to their pensions. Local governments continued to boost benefits, increasing their pension obligations by hundreds of millions of dollars.

There was no recommendation in the report, but it comes with a warning that the problem will likely get worse unless steps are taken to either reduce benefits or increase contributions.

Ineligible Voters

On Wednesday, state election officials sent county election officials around the state a new list of 198 people suspected of being non-U.S. citizens. The list includes people whose names were checked against a federal immigration database.

Earlier this year, the state had produced a list of more than 2,600 registered voters that were potentially ineligible, but most county election officials did not remove voters on that list after legal questions and questions about the accuracy of the list arose.

Natural Gas

Miami-based NoPetro opened a natural gas vehicle refueling station in Tallahassee earlier this week. The company plans a network of 16 refueling stations in Florida and another three in Georgia. Agriculture Commissioner Adam Putnam said at the event that a planned network of natural gas refueling stations could help overcome the “chicken-or-the-egg” dilemma for alternative-fueled vehicles.

The NoPetro grand opening this week resulted from a contract entered into with Leon County Schools. In 2007, the district made a commitment to buying new school buses that use natural gas because it is cheaper, cleaner, and the energy source is available in the United States. In 2010, it contracted with NoPetro to refuel school buses at its bus refueling station on the east side of Tallahassee. As part of the contract, the company built the fueling station, which is also available to motorists who register their vehicles with them. The natural gas is then pumped by an attendant.

Jorge Herrera, NoPetro’s CEO and co-founder, says the company plans to build the other 16 refueling stations in Florida within the next three years.

Environmental Protection

The state Department of Environmental Protection (DEP) concluded a series of workshops related to proposed rule changes recently, in an effort to provide consistency amongst the state’s water management districts. Letters from stakeholders following these meetings indicate that an initiative that is intended to create more consistent water-use permitting statewide is a threat to future water supplies. Among the proposed rule changes is a requirement that water management districts not reduce the amount of water-pumping that is allowed.

The Florida Conservation Coalition says it does not understand how districts can prevent environmental harm or deal with the possibility of there being less water in the future if they are issuing permits that can’t be modified. Similar concerns were raised in letters submitted by the Gulf Restoration Network and the St. Johns Riverkeeper, as well as one letter signed by the Conservancy of Southwest Florida and the Everglades Foundation.

Save the Manatee Club wrote in its letter that permits should be issued by a maximum of 10 years. Other groups and environmentalists argued more generally for a needed emphasis on conservation.

A spokesman for DEP said applicants must show water management districts that their water use will not cause environmental harm. Water management district staff, according to the spokesman, does extensive modeling and consider many factors when reviewing a permit application.

Public Service Commission

The Public Service Commission (PSC) agreed to hold formal hearings on Florida Power & Light's (FPL) proposed rate increase settlement, over the objection of consumer advocates. The settlement has the support of large commercial and government customers.

Members of the PSC are in agreement with parts of the proposal, but have stated they need more supporting evidence before deciding whether to sign-off on the deal, which includes elements not covered by previous hearings on FPL's original request to raise base rates by \$690.4 million, effective in January. The proposal would increase rates by only \$378 million in 2013, but opponents argued they would go up another \$1 billion by the end of the four-year agreement.

The proposal would raise residential customers' base rates by 24 percent over time. FPL estimates that bills would go up only 7 percent, due to anticipated reductions in other billing factors, including fuel costs.

Aside from raising rates, the proposal calls for additional increases when new power plants go into service in 2014 and 2016. FPL would also be barred from seeking another base rate increase in four years. If the PSC rejects the agreement, FPL can file additional rate cases after 2013.

Any increase approved for 2013 would go into effect in two steps, one in January and another in June when a new plant at Cape Canaveral is slated to go on line.

Florida Supreme Court

The Florida Supreme Court rules this week that buyers must turn over financial records sought by the state in a lawsuit over the sale of a hospital building and adjoining property. The Court's ruling quashed a decision by the Third District Court of Appeal, which ruled that the request was overbroad. Similar rulings in other appellate courts were also nullified.

The case, which now goes back to trial court in Miami, stems from the state's sale of the Glenbeigh Hospital of Miami property to Florida National College of Hialeah for \$4.4 million in 2001. The college assigned its rights to American Educational Enterprises, also in Hialeah, which sued the state after a lender put the value at only \$2.85 million. The state has denied claims from American that it misrepresented the value.