IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

ALACHUA COUNTY, FLORIDA, BROWARD COUNTY, FLORIDA, GILCHRIST COUNTY, FLORIDA, HERNANDO COUNTY, FLORIDA, INDIAN RIVER COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, LEE COUNTY, FLORIDA, LEON COUNTY, FLORIDA, OKEECHOBEE COUNTY, FLORIDA, ORANGE COUNTY, FLORIDA, OSCELOLA COUNTY, FLORIDA, PALM BEACH COUNTY, FLORIDA, PINELLAS COUNTY, FLORIDA, and SEMINOLE COUNTY, FLORIDA, all of which are political subdivisions of the State of Florida, and the FLORIDA ASSOCIATION OF COUNTIES, INC., a not-for-profit corporation established under Florida law,

Plaintiffs,

vs.

CASE NO. 2004-CA-1398
2004-CA-1757

ANTHONY SCHEMBRI, in his official capacity as SECRETARY of the STATE OF FLORIDA DEPARTMENT OF JUVENILE JUSTICE, TOM GALLAGHER, in his official capacity as CHIEF FINANCIAL OFFICER of the STATE OF FLORIDA,

Defendants.
_____/

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter is before me on cross motions for summary judgment. On October 1, 2004, I entered an order denying the counties' motions for an emergency temporary injunction. At the suggestion of the parties, on October 4, 2004, I entered an order for an expedited summary judgment schedule because in my view the issue was almost exclusively one of law and because the issue needed to be resolved quickly.

The issue for ultimate resolution of this dispute is the constitutionality of section 985.2155 of the Florida Statutes which was newly enacted this year. Section 985.2155 provides, in pertinent part:

> **Shared county and state responsibility for juvenile detention.**--
> (1) It is the policy of this state that the state and the counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles.
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> . . . .
>
> (3) Each county or the state shall pay the costs incurred by the county in providing detention care for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.
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> . . . .
>
> (5) Each county shall incorporate into its annual county budget sufficient funds to pay its costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year.
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> (6) Each county shall pay to the department for deposit into the Juvenile Justice Grants and Donations Trust Fund its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties.
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> (7) The Department of Juvenile Justice shall determine each quarter whether the counties of this state are remitting to the department their share of the costs of detention as required by this section. If the Department of Juvenile Justice determines that any county is remitting less than the amount required, the Chief Financial Officer shall withhold from such county a portion of any state funds to which the county may be entitled equal to the difference of the amount remitted and the amount required to be remitted.
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> (9)(a) For juveniles who reside in other states, the department shall negotiate with those states for the payment of the costs of detention care for the period of time prior to the final court disposition.

(b) For juveniles for whom no state of residence is established, the department shall pay from state funds the costs of detention care for the period of time prior to final disposition.

I am here quoting less than all of section 985.2155 because of my conclusion that the issue is whether the legislature enacted, in a constitutionally permissible way, a statute to compel the counties, instead of the state government, to pay the cost of detention care. The quotations here are intended to illustrate the essential elements of the statute for the purpose of resolving that issue.

Article VII, Section 18 governs the requirements for statutes imposing costs on local governments or constraining revenues of local governments. It provides, in pertinent part:

> **Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.--**
> (a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:[1]
>
> funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
>
> the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
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> the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature;
>
> the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments;
>
> or the law is either required to comply with a federal requirement or required for

[1]I have altered the spacing and paragraph breaks to try to make Article VII, Section 18 easier to read. I intend no alteration of its interpretation.

eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

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

(c) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

The provisions of this subsection shall not apply to

enhancements enacted after February 1, 1989, to state tax sources,

or during a fiscal emergency declared in a written joint proclamation issued by the president of the senate and the speaker of the house of representatives,

or where the legislature provides additional state-shared revenues which are anticipated to be sufficient to replace the anticipated aggregate loss of state-shared revenues resulting from the reduction of the percentage of the state tax shared with counties and municipalities, which source of replacement revenues shall be subject to the same requirements for repeal or modification as provided herein for a state-shared tax source existing on February 1, 1989.

(d) Laws adopted to require funding of pension benefits existing on the effective date of this section,

criminal laws,

election laws,

the general appropriations act,

special appropriations acts,

laws reauthorizing but not expanding then-existing statutory authority,

laws having insignificant fiscal impact,

and laws creating, modifying, or repealing noncriminal infractions,

are exempt from the requirements of this section.

(e) The legislature may enact laws to assist in the implementation and enforcement of this section.[2]

The matter has been thoroughly briefed and argued. I conclude that to the extent noted below, there is no genuine issue of material fact and that summary judgment should be entered for the counties as a matter of law.

1. Standards for Constitutional Litigation

a. Deference to the Legislative Branch

The separation of powers demands that statutes are never presumed unconstitutional, that every reasonable deference must be accorded to the legislative branch's exercise of its authority and resolution of every reasonable doubt and ambiguity is resolved in favor of legislative discretion. The democratic self-governance established by the constitution means that it is not for the courts to judge the wisdom or general propriety of legislative enactments. Judges must exercise substantial self-restraint to preserve the legislative authority established in the constitution.

The Department asserts that a proponent of a constitutional challenge bears a "burden of proof" "beyond a reasonable doubt." These phrases together in this context can be misleading.

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[2]My research revealed no such laws effectively enacted since Article VII, Section 18 was adopted. The only such law passed by the legislature was vetoed by Governor Chiles. The only appellate opinion addressing Article VII, Section 18 revealed by my research held only that it operated prospectively and did not otherwise apply or interpret this provision. In Interest of B.C., 610 So.2d 627 (Fla. 1st DCA1992)

To the extent that constitutional challenges present mixed questions of law and fact[3] I understand the burden of proof as to factual issues to be a preponderance of the evidence – the typical civil burden of proof – in cases tried on the merits in an evidentiary final hearing. There is never a "burden of proof" as to legal issues.

Of course, in many cases addressing the constitutionality of a statute there is no disputed question of fact and the case may be resolved by summary judgment. The statute says what it says and the constitution says what it says. In cases resolvable by summary judgment, discussing the "burden of proof" can confuse the issue. The standard for issues of fact is that imposed by Rule 1.510(c). "The judgment sought shall be rendered if . . . there is no genuine issue as to any material fact. . . ." If fact issues can be resolved only by the weighing of evidence the case is not appropriate for summary judgment. "The rule is well settled that the burden of proof on the party moving for summary judgment is to show the absence of any genuine issue of material fact, and all doubts and inferences must be resolved against the movant." Northwestern, Inc. v. Gulf Asphalt, 443 So.2d 508, (1ST DCA, 1984). To the extent stated herein there is no genuine dispute of material fact.

What the cases cited by the Department mean, in my view, is that statutes are never presumed unconstitutional and the judiciary owes every reasonable deference to the legislature's interpretation. If there is any reasonable doubt that the constitution permits the legislature's

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[3]Bush v. Holmes, 767 So.2d 668 (Fla. 1st DCA 2000) (citing Glendale Federal Sav. and Loan Ass'n v. State, Dept. of Ins. 485 So.2d 1321(Fla. 1st DCA 1986). "Although the facial constitutionality of a statute is a question for determination by the court and not by a jury, it is frequently a mixed question of fact and law that can only be resolved after consideration of the relevant evidence." Homeowner's Corp. of River Trails v. Saba 626 So.2d 274 (Fla. 2d DCA 1993).

interpretation, the legislature's interpretation prevails. Ambiguity in the constitution's terms are resolved in favor of the legislature's interpretation if reasonably possible. If any reasonable reading of the constitution would permit the legislature's interpretation, that interpretation must prevail. Indeed that is precisely what the case cited by the Department says. Medina v. Gulf Coast Linen Services, 825 So.2d 1018 (Fla. 1st DCA 2002) (the phrase "burden of ***proof*** beyond a reasonable doubt" does not appear in this opinion). I concede that the Department's literal position could be fairly argued from what Medina says, but I do not think it is what the appellate courts actually mean.

I likewise specifically reject the counties' suggestion that I shift the "burden of proof" at the summary judgment stage to and from the state and counties and among constitutional limits and their exceptions. The courts' obligation to defer to the legislative branch's enactment, if the language of the constitution reasonably permits deference, never shifts and does not depend on whether the language can be characterized as an exemption or exception to a limit on legislative power. The legal standard is a simple one. If any reasonable reading of the constitution would uphold the statute, the statute is constitutional.

But the constitution's reservation to the courts of the judicial power of government also means that it is for the courts to apply those restraints on legislative power imposed by the constitution's terms. Broad judicial restraint in constitutional adjudication is a crucial recognition of the limits of judicial authority, but the responsibility of applying the constitution in specific cases is for the courts. While each branch of government is bound to accept the limits imposed by the constitution, the decision of individual cases is for the courts alone. It is plain that the courts have no authority to decide what is reasonably good. But it is equally plain that

the courts are responsible to decide what the constitution reasonably says.

All of this is a long winded way of saying that I fully recognize the judiciary's limited role in constitutional adjudication. My task is not to determine whether section 985.2155 is good or wise. My task is only to determine whether section 985.2155 can be reconciled with any reasonable reading of the constitution's limits on legislative power.

b. Principles of Interpretation

The Department and the counties submitted voluminous material related to both section 985.2155 and Article VII, Section 18. I endeavored to read all of it and these materials were of great assistance in understanding the context of these provisions. I am not including in this order much discussion of these materials, mostly because I conclude that they unambiguously support the conclusions I reached and also because it seems of some importance that this issue be resolved as quickly as possible. But in a legal sense, these contextual materials are largely unnecessary to the resolution of this dispute because both Article VII, Section 18 and section 985.2155 are detailed and plain.

It seems to me especially imperative that the words created by the exemptions under Article VII, Section 18 be given a practical, common, familiar meaning. This is, of course, the first (and often last) canon of construction – what words say is the polestar of what they mean. Florida Soc. of Ophthalmology v. Florida Optometric Ass'n, 489 So.2d 1118 (Fla.1986) ("Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.") But it is even more appropriate considering that our constitutional amendments are submitted to the direct

democratic process of a referendum of the voters. Fla. Const. Article XI. It seems inappropriate to expect the electorate to anticipate that words and phrases submitted to them will have some uncommon meaning that can be known only by resort, for example, to ambiguous statements of interest group representatives made during – or, worse still, after – the development of the amendment. Such statements were never voted upon by anyone with authority to vote. In my view my conclusions are compelled by what the constitution says without resort to interpretation or resolution of ambiguity.

This is not to say that I ignored the second principle of constitutional interpretation. "[C]onstitutional provisions should not be construed so as to defeat their underlying objectives." Florida Soc. of Ophthalmology v. Florida Optometric Ass'n, 489 So.2d 1118 (Fla.1986). However, I conclude that with respect to Article VII, Section 18, and particularly its application to section 985.2155, the plain words in no way conflict with the underlying objectives.

Article VII, Section 18 is in no sense absolute. Any statute, no matter how expensive to local government, is constitutional if passed by the requisite supermajority. The point is not to forbid the imposition of costs but to work a subtle yet meaningful shift in the balance among state and local government and, not incidentally, individual legislators – "bargaining power" as some of the historical documents describe it. This underlying objective is only preserved by taking the constitution at its plain word.

2. Is Section 985.2155 a "Criminal Law" Within the Meaning of Article VII, Section 18(d)?

There is no genuine dispute that the basic obligation imposed by section 985.2155 – compelled payment by the counties of the cost of detention care – is a "general law requiring

such county or municipality to spend funds or to take an action requiring the expenditure of funds" within the meaning of Article VII, Section 18. I therefore address in turn the Department's arguments concerning the exemptions and exceptions to Article VII, Section 18.

The defendants contend that section 985.2155 is a criminal law and is therefore exempted from Article VII, Section 18 by subsection d. which provides:

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

Thus, the department devotes substantial effort attempting to demonstrate that delinquency law in general is substantively similar to adult criminal law so that delinquency law should be considered "criminal law" for purposes of Article VII, Section 18(d).

This seems to me a premature inquiry. Very little purpose is served by considering the similarities and differences between the statutes' general treatment of adult and juvenile offenders. Section 985.2155 contains no indication that the legislature intended to affect anything related to delinquency policy through section 985.2155. This legislation is not asserted to have been the product of a broad reconsideration of Chapter 985 or detention generally. Nor is section 985.2155 related to some particular substantive or procedural issue of juvenile delinquency. Section 985.2155 makes explicit that detention policy and procedure remain unchanged. Only the responsibility for paying is changed.

It seems to me not particularly instructive to observe that under the seminal authorities of In re Gault and In re Winship juveniles accused of committing "delinquent" acts were granted some constitutional due process rights congruent with those of adult criminal defendants. Nor

does it provide much instruction to observe that juveniles accused of violating criminal laws lack their adult counterparts' rights to bail or trial by jury or that juvenile sanctions are radically different in many respects from adult sanctions.[4] Section 985.2155 has nothing to say about these subjects.

The "law" at issue is not ***chapter*** 985, but ***section*** 985.2155. Section 985.2155 does not apply to any juvenile offender at all. It applies to counties never accused or convicted of any criminal offense. Unless I conclude that section 985.2155 creates specific rights or obligations that could fairly be characterized as "criminal law" it is unnecessary to opine whether delinquency law generally is "criminal law."

"Criminal law" in its plain and familiar meaning is the law that defines criminal offenses, the law that governs the investigation of an offense, the law that defines the standards by which a violation may be established, the law that sets the punishment associated with a violation, the law that establishes the preclusive or other effect of a criminal judgment, the law that establishes the appellate process and jurisdiction over a criminal judgment and other judicial acts in criminal cases. In sum, "criminal law" is the law practiced by prosecutors and criminal defense lawyers in criminal judicial proceedings. But even in its most expansive sense, criminal law is unified by one prerequisite – a crime.[5]

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[4]Various political and legal attempts to treat juvenile offenders more or less like adult offenders have waxed and waned throughout our history. See Christopher P. Manfredi, The Supreme Court and Juvenile Justice (University of Kansas Press 1998).

[5]See, e.g., Shorter Oxford English Dictionary ("Criminal law: concerned with the punishment of offenders; opp. civil law."). More historically, Justice Holmes would likely have found the Department's argument curious. Oliver Wendell Holmes, The Common Law, Lecture II, The Criminal Law (Dover Edition 1991).

"Criminal law" does not, in my view, reasonably include a law that defines the fiscal obligations of local and state government entities. Section 985.2155 is in no common or familiar sense a "criminal law." It applies to no criminal act. It applies to no accused. It applies to no convicted offender. No prosecutor or criminal defense lawyer would ever be called upon to interpret or apply it before any judge considering the fate of any accused or convicted (or adjudicated delinquent) person. Section 985.2155 establishes county responsibility to pay for a government function. Section 985.2155 is a civil, local government law, not a criminal law.

3. Are Cost Savings to the Counties Created by General Law Implementing the Court Funding Amendment "Funds Appropriated" to the Counties Within the Meaning of Article VII, Section 18(a)?

The Department argues that when the legislature implemented its obligations under Article V, Section 14, the legislature estimated that on balance the state absorbed costs and the counties were freed of costs sufficient to offset the expense imposed on the counties by section 985.2155. The Department argues that this net fiscal benefit amounts to "funds appropriated" within the meaning of Article VII, Section 18(a) which provides in pertinent part:[6]

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure. . . ."

The Department advances no persuasive argument for giving the word "appropriation" a different meaning in this context than as elsewhere used in the constitution. An appropriation is at minimum a legislative enactment subject to the gubernatorial veto process. Article III, Section

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[6]There was some discussion among legislators during the floor debate on this topic. No legislator opined that this "net gain" satisfied the "funds appropriated" clause of Article VII, Section 18. The only explicit assertion of a basis to satisfy Article VII, Section 18 was that section 985.2155 satisfied the "similarly situated" clause. Although the Department has not pursued this point in the same way, I address the legislators' specific comments below.

8(a) provides in pertinent part:

> Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation. If during that period or on the seventh day the legislature adjourns sine die or takes a recess of more than thirty days, the governor shall have fifteen consecutive days from the date of presentation to act on the bill. **In all cases except general appropriation bills, the veto shall extend to the entire bill. The governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.**

Consistent with the direction of Article III, Section 8(a), sections 216.011(b) and (c) provide:

> (b) "Appropriation" means a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act.
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> (c) "Appropriations act" means the authorization of the Legislature, based upon legislative budgets or based upon legislative findings of the necessity for an authorization when no legislative budget is filed, for the expenditure of amounts of money by an agency, the judicial branch, or the legislative branch for stated purposes in the performance of the functions it is authorized by law to perform. . . .

I conclude that there can be no appropriation absent an enactment by the legislature subject to the governor's veto. It is undisputed that the legislature appropriated no funds to pay for the obligation imposed on the counties by section 985.2155.

4. **Are cost savings to the counties created by general law implementing the court funding amendment authority provided to the counties "to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality"?**

Under Article VII, Section 18(a), a county may be bound by a general law obligating the county to spend funds if, "the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure

by a simple majority vote of the governing body of such county or municipality." The defendants argue that the money left over from the state's assumption of its obligations under Article V, Section 14 amounted to an authorization to enact a funding source.

The defect in the Department's argument on this issue is that for it too succeed would require that the word "authorizes" be deleted from Article VII, Section 18. The Department demonstrated no more than that the legislature estimated the amount of revenue that would be necessary to offset the expense of section 985.2155. But the legislature can "authorize" only by an act of the legislature. The legislature acts by voting. Fla. Const. Art. III, Section 7. With respect to section 985.2155, the legislature's only act was to enact section 985.2155. It enacted nothing that "authorizes" the counties to do anything other than pay.

To the contrary, the funding sources created by the Article V, Section 14 legislation were conceded by the Department to be restricted to paying for court related costs and contained no authorization that the new funding sources be used to pay the cost of detention under section 985.2155. The state contends that it does not matter whether the funds could actually be used to pay the compelled expenditure so long as there was "generat[ed] the amount of funds" estimated to be equal. This is not a reasonable interpretation of the plain language. Funds restricted to a specific purpose cannot fund a different purpose.

5. Is Section 985.2155 an expenditure "required to comply with a law that applies to all persons similarly situated, including the state and local governments?"

Article VII, Section 18 permits the legislature to bind the counties to make expenditures, " required to comply with a law that applies to all persons similarly situated, including the state and local governments." The defendants argue that because section 985.2155 applies to all

counties it "applies to all persons similarly situated" and so is exempt pursuant to Article VII, Section 18(a). The Department's interpretation would mean that the legislature proposed to the electorate a constitutional amendment (a change, an alteration) that meant nothing at all. The legislature could uniformly and by simple majority vote impose any cost it chose on Florida local governments. It seems unnecessary to recite the canons of construction that would suggest against such an interpretation. I conclude that the defendant's interpretation is unreasonable.

The Department's current argument regarding the "similarly situated" clause is different from that advanced by legislators during the legislative session. The sole argument advanced during the floor debate in each house against the proposition that section 985.2155 violated Article VII, Section 18 was that section 985.2155 applied to Florida counties and to ***states other than Florida*** whose residents found themselves incarcerated in Florida juvenile detention centers. Section 985.2155(9)(d) states, "[f]or juveniles who reside in other states, the department shall negotiate with those states for the payment of the costs of detention care for the period of time prior to the final court disposition."

Although it appears that the Department has now abandoned this argument, it seems apparent that the same "law" does not purport to apply to states other than Florida. Florida counties are compelled to pay both by operation of section 985.2155(5) and by the enforcement mechanism provided in section 985.2155(7). By contrast, the Department is required only to "negotiate" with other states, but those other states are not compelled to pay. "The law" – compelled payment to the state – does not by its terms apply at all to any entity except Florida counties.

I conclude that the other arguments advanced by the counties – unlawful delegation to the Chief Financial Officer and vagueness – present no sufficient basis to further attack the validity of the statute or warrant additional comment. I further conclude that the Department's unclean hands argument presents no arguable basis to delay issuance of this judgment and injunction.

For all of these reasons it is hereby ADJUDGED:

1. The counties' motion for summary judgment is granted. A final summary declaratory judgment and injunction is hereby entered. This is intended to be a final adjudication on the merits.

2. The Department's motion for summary judgment is denied.

3. The Chief Financial Officer's motion to dismiss is denied.

4. Section 985.2155 is hereby declared to be unconstitutional as forbidden by Article VII, Section 18 of the Florida Constitution and section 985.2155 of the Florida Statutes is therefore of no force and effect.

5. A permanent injunction is hereby granted to the counties. The Department is enjoined from enforcing section 985.2155 of the Florida Statutes. The Chief Financial Officer is enjoined from implementing the remedies set out in section 985.2155(7) of the Florida Statutes.

IT IS SO ADJUDGED in Chambers at Tallahassee, Leon County, Florida this 12th day of November, 2004.

Jonathan Sjostrom, Circuit Judge

Copies: All Counsel, Lead Counsel for Counties, Department and Chief Financial Officer by Fax