

# **MANDATES ON COUNTIES IN FLORIDA**

**FLORIDA ASSOCIATION OF COUNTIES<sup>i</sup>  
AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS<sup>ii</sup>  
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## I. INTRODUCTION

State and federal mandates are proclamations of law – pursuant to a constitutional or statutory provision, or an administrative regulation – which require a local government to carry out a specified activity, service, or program or otherwise expend money in a dictated way.<sup>1</sup> In a fiscal sense, a mandate is the “difference between what a local government spends on a legally mandated activity and what the government would spend on the same activity [or lack thereof] in the absence of that mandate.”<sup>2</sup> In the last quarter of the 20<sup>th</sup> century, there was an influx of federal mandates placed on state governments in order to maintain social policy control while cutting federal spending. These fiscal responsibilities required by federal law led to states enacting their own cost-shifting legislation onto local governments. Florida is no exception to this trickle-down trend.<sup>3</sup>

In the 1980’s alone, Florida’s legislature enacted approximately 300 mandates requiring local governments’ compliance.<sup>4</sup> Counties and municipalities were forced to spend millions of dollars to comply with these mandates, often addressing problems from which they did not themselves suffer. Moreover, many of these mandates were completely unfunded by the state.<sup>5</sup> In response to the surge of mandates, the Florida Legislature proposed an amendment to the state’s constitution which would restrict mandates in 1990.<sup>6</sup> Although this amendment (known as the “Unfunded Mandates” provision) was considered a win amongst many local government officials, there were, many exemptions and exclusions that allow for the continuance of cost-shifting legislation by the state. Even after the Unfunded Mandates provision, counties remain particularly susceptible to mandate legislation, as compared to cities, due to their closer connection to the state.

Florida’s counties rely on ad valorem taxes, service charges, state-shared revenue, utility service taxes, and other lesser revenue sources in order to comply with the numerous mandates handed down to them by the state (and somewhat by the federal government) and to fund their own local needs. It can be challenging to accurately measure the costs of these mandates for many reasons. Data on the costs of mandates may not always be reliable. Many officials have different definitions of what qualifies as a mandate, and there are countless indirect costs associated with mandates.<sup>7</sup> This report aims to flesh out the myriad of mandates which require Florida’s counties to fund the different responsibilities rendered to them by the state. Only express, specific constitutional or statutory mandates on counties are included in this report

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<sup>1</sup> Joseph F. Zimmerman, *The State Mandate Problem*, 19 STATE & LOCAL GOV. REV. 2, at 78 (1987).

<sup>2</sup> *Id.*

<sup>3</sup> Nancy Perkins Spyke, *Florida’s Constitutional Mandate Restrictions*, 18 NOVA L. REV. 1403, 1404 (1994).

<sup>4</sup> *Id.*

<sup>5</sup> J. Edwin Benton, *Fiscal Aid and Mandates the County Experience* (providing that sixty-five percent of state mandates were paid for in whole or partially by counties, while only twenty-seven percent of federal mandates were such).

<sup>6</sup> Fla. Const., art. VII, § 18.

<sup>7</sup> Benton, *supra* note 5.

## II. HISTORICAL OVERVIEW OF COUNTY HOME RULE AND THE UNFUNDED MANDATES PROVISION

The 1885 Florida Constitution included a rather glossed over approach to governing counties than the State Constitution of today. Similar to the current constitution, the 1885 version provided the guidelines for local government in Article VIII. However, the provisions mainly focused on the establishment of counties and appointment of commissioners and other county officers, thus speaking relatively little to the authority of counties and other forms of local government. The major revisions of Florida's Constitution took place in 1968, which added a majority of the language seen today.

### A. Home Rule Powers

Prior to this 1968 constitutional revision, Florida's counties could only exercise the powers granted by the legislature. However, due to the public's expectations for local governments to resolve the matters particular to their area, a national movement developed favoring the broadening of powers for county and municipal governments.<sup>8</sup> The reallocation of power into counties that occurred with the 1968 Constitution gave counties the ability to enforce rules on matters of local concern and gave local decision-makers the tools to meet the demands of their people.<sup>9</sup> While the State furnished counties with many of the powers it once held exclusively, the counties did not develop complete independence.

Chapter 125 of the Florida Statutes prescribes the general powers of counties. "These powers illustrate the many functions in which counties are involved, including fire protection, health and welfare services, zoning and business regulations, air pollution control, parks and recreation, libraries, museums, waste and sewage regulation and control, and public transportation."<sup>10</sup> A critical focal point to this report involves the concept that Chapter 125 gives the power for counties to act in these many different forms—it does not, however, demand that counties provide such services.

### B. The Unfunded Mandates Provision

The 1990 Unfunded Mandates provision was one of the most popular amendments to the Florida Constitution ever adopted. In total, over two million electors voted for the amendment sponsored by the Florida Legislature.<sup>11</sup> The amendment contains five subsections pertaining to mandate restrictions: (a) provides that there must be certain conditions met in order to for counties and municipalities to fund the mandated requirement; (b) prohibits altering the local

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<sup>8</sup> FAC, FLORIDA COUNTY GOVERNMENT GUIDE 25 (2012).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 26.

<sup>11</sup> Laws Affecting Local Governmental Expenditures or Ability to Raise Revenue or Receive State Tax Revenue, Florida Dep't of State Div. of Elections, *available at* <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=10&seqnum=57> (recognizing 2,031,557 as voting for the constitutional amendment, as opposed to only 1,140,745 voting against it).

government's revenue power without super majority vote; (c) prohibits minimizing the state tax shared with local governments without super majority vote; (d) provides that laws funding pension benefits, criminal laws, election laws, the general appropriations act, special appropriations act, laws authorizing but not expanding statutory authority, are exempt; and (e) provides a catch-all that if a law has an "insignificant fiscal impact" it is exempt from the mandate restrictions.

### III. THE OBLIGATIONS AND UNCERTAINTY BEHIND MANDATES DELEGATED TO COUNTY GOVERNMENTS

The Florida Constitution is the organic source of what is required of counties; however the Florida Statutes, Attorney General Opinions, and case law also provide crucial references in identifying county mandated responsibilities. Chapter 125 of the Florida Statutes provides the powers and duties that county governments have the authority to provide. This comprehensive list does not mean that counties must provide such services, just that they have the ability to do so.

#### A. County Operations

##### *i. Public Records and Open Meetings*

The Florida Constitution entitles every person to access public records and meetings in connection with the official business of any "public body, officer, or employee of the state, or persons acting on their behalf."<sup>12</sup>

The "Government in the Sunshine Law" obligates public boards or commissions (e.g. Board of County Commissioners) to open their meetings to the public, to provide reasonable notice of such meetings, and to provide minutes of such meetings.<sup>13</sup> The notice requirement is somewhat broadly defined as "any procedure that is fair under the circumstances and necessary to protect the public interest."<sup>14</sup> Moreover, a new additional feature to this "open meetings" mandate is the requirement for members of the public to be given the opportunity to be heard before a board or commission.<sup>15</sup>

Public records encompass a wide-ranging amount of materials,<sup>16</sup> but as long as the record is "made or received by an agency in connection with official business,

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<sup>12</sup> Fla. Const. art., I, § 24.

<sup>13</sup> Fla. Stat. § 286.011 (2013) ("All meetings of any board or commission of any state agency or authority . . . are declared to be public meetings open to the public at all times.")

<sup>14</sup> Fla. Stat. § 120.525(3) (2013). Currently, the notice is not required to contain an agenda with every issue that will be discussed, *Grapski v. City of Alachua*, 31 So.3d 193 (2010), but is required to inform the public where and when the meeting will be openly held, *Lyon v. Lake Cnty.*, 765 So.2d 785 (2000).

<sup>15</sup> Fla. Stat. § 286.0114 (2013) ("Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.")

<sup>16</sup> Fla. Stat. § 119.011(12) (2013) ("Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.")

and is used to perpetuate, communicate or formalize knowledge of some type” the public has the right to inspect or copy it.<sup>17</sup>

### ***ii. Ordinance Adoption Requirements***

Counties have the power to enact ordinances to the extent authorized by the Florida Constitution.<sup>18</sup> However, these ordinance-making powers are restricted by mandated procedures which require: notice,<sup>19</sup> official copy kept available to the public, a place for the public to view the copy of the ordinance, and opportunity for interested parties to be heard with respect to the proposed enactment or amendment of the ordinance.<sup>20</sup> Ordinance adoption procedures for land use ordinances are spelled out in the statute. Other ordinance requirements: Sec. 125.67 provides requirements for ordinances and ordinance amendments and includes:

The enacting clause of every ordinance shall read: “*Be it Ordained by the Board of County Commissioners of \_\_\_\_\_ County*”

### ***iii. Other Notice Requirements***

Besides enacting or amending county ordinances, there are many other county actions which mandated with notice and advertising procedures. Chapter 50 of the Florida Statutes contains the extensive practice and procedure guidelines which a county must use when notifying the public of certain solicitations for products and services. In general, any statutorily required legal notice, advertisement, or publication must be published in a newspaper: that has been in existence for at least one year,<sup>21</sup> printed and published weekly or more often, contains at least one-quarter of its words in English, and is for sale to the general public.<sup>22</sup>

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<sup>17</sup> Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So 2d 633 (Fla. 1980); Fla. Stat. § 119.01(1) (2013) (“It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person.”).

<sup>18</sup> Fla. Const. art. VIII, § 1.

<sup>19</sup> Notice must be published in a newspaper serving said county. *See infra* Part.III.A.iii (discussing the several requirements when posting a notice within a newspaper is necessary).

<sup>20</sup> Fla. Stat. § 126.65(2)(a) (2013) (“The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, . . . A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.”).

<sup>21</sup> Fla. Stat. § 50.031 (2013) (requiring publication to be “in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter at a post office in the county where published”).

<sup>22</sup> Fla. Stat. § 50.011 (2013) (“Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a

#### *iv. Ethics*

Besides the notice and public meeting requirements, county commissioners and constitutional officers are also mandated to complete ethics training annually that addresses the Code of Ethics for Public Officers and Employees and Florida's public records and public meetings laws.<sup>23</sup>

#### *v. Budget System*

Counties are required to “prepare, approve, adopt, and execute” a budget every fiscal year.<sup>24</sup> The budget must be approved by the board of county commissioners and must be balanced so that the receipts match the appropriations and reserves.<sup>25</sup> After the constitutional officers have provided proposed budgets to the board of county commissioners and the board then forms a tentative budget, the budget is then subject to notice and hearing requirements.<sup>26</sup> The board of county commissioners is required to prepare a summarized statement of the adopted tentative budgets (with different requirements therein) and advertise the summary through a newspaper in order to allow people to participate in public hearings when adopting final budgets.<sup>27</sup> Amendments to the final adopted budgets are also mandated to comply with their own notice and public hearing requirements.<sup>28</sup>

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newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.”)

<sup>23</sup> Fla. Stat. § 112.3142(2)(a) (2013) (“All constitutional officers must complete 4 hours of ethics training annually that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.”); Fla. Stat. § 112.3142(1) (2013) (defining “constitutional officer” to include: “the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools”).

<sup>24</sup> Fla. Stat. § 129.01(1) (2013).

<sup>25</sup> Fla. Stat. § 129.01(2) (2013) (“The budget must be balanced, so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves.”).

<sup>26</sup> Fla. Stat. § 129.03 (2013) (“The board of county commissioners shall receive and examine the tentative budget for each fund and, subject to the notice and hearing requirements . . .”).

<sup>27</sup> *Id.* (“Upon receipt of the tentative budgets and completion of any revisions, the board shall prepare a statement summarizing all of the adopted tentative budgets. The summary statement must show, for each budget and the total of all budgets, the proposed tax millages, balances, reserves, and the total of each major classification of receipts and expenditures, classified according to the uniform classification of accounts adopted by the appropriate state agency. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county, or by posting at the courthouse door if there is no such newspaper . . .”).

<sup>28</sup> *See* Fla. Stat. § 129.06 (2013) (requiring the different notice and public meeting requirements pertaining to amendments of the county budget, including: advertisements in newspaper and posting to the county's official website).

### ***vi. Contract Procedures and Bidding Requirements***

There is no general mandate which requires Florida's counties to competitively bid or award the lowest bidder, however, the "strong public policy of the state requires" that "expenditures of public funds must be made on competitive bids whenever possible."<sup>29</sup> Moreover, there are several statutory provisions that require counties to participate in competitive bidding. When a contract or purchase is subject to competitive bidding, counties must publish a notice soliciting submission of bids and then the county must award the contract to the lowest or "best" bidder.<sup>30</sup> For example, the Consultants' Competitive Negotiation Act (CCNA) requires counties to fulfill a three-step process – including public announcement, competitive selection, and negotiation between multiple parties – in order for the county to contract professional services of an architect, engineer, landscape architect, surveyor, or design-builder.<sup>31</sup>

Further, beyond each county's responsibilities towards the bidders, the "Public Bid Disclosure Act" requires counties and other local governmental entities to disclose all permits or fees (including license, permit, impact, and inspection fees) in the bidding documents.<sup>32</sup>

### ***vii. Florida Retirement System***

"Participation in the Florida Retirement System is compulsory for all officers and employees" throughout Florida, including county officers and employees.<sup>33</sup>

## **B. County Buildings**

### ***i. Supervision and Control of County Property***

Counties have the primary responsibility for the supervision and control of all county property not delegated to another "custodian."<sup>34</sup> This responsibility is ultimately vested in the board of county commissioners, and the property purchased by the board or by the county officers must comply with the board's instructions.<sup>35</sup>

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<sup>29</sup> 66-9 Fla. Op. Att'y Gen. (1966).

<sup>30</sup> See *Marriott Corp. v. Metropolitan Dade Cnty.*, 383 So.2d 662 (1980) (holding that the county was obligated to follow competitive bidding standards requiring award to be made to lowest or best bidder and that the board of county commissioners may not simply approve a local biddee).

<sup>31</sup> See general Fla. Stat. §287.055 (2013).

<sup>32</sup> Fla. Stat. § 218.80 (2013) ("It is the intent of the Legislature that a local governmental entity shall disclose all of the local governmental entity's permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents or other request for proposal, unless such permits or fees are disclosed in the bidding documents or other request for proposal for the project at the time the project was let for bid. It is further the intent of the Legislature to prohibit local governments from halting construction to collect any undisclosed permits or fees which were not disclosed or included in the bidding documents or other request for proposal for the project at the time the project was let for bid.").

<sup>33</sup> Fla. Stat. § 121.051 (2013)

<sup>34</sup> Fla. Stat. § 274.03 (2013) ("A governmental unit shall be primarily responsible for the supervision and control of its property but may delegate to a custodian its use and immediate control and may require custody receipts.").

<sup>35</sup> 60-18 Fla. Op. Att'y Gen. (1960).



Moreover, counties are given the power to “provide and maintain county buildings” – which although this is just an authority bestowed, seems to suggest that the board of county commissioners is responsible for the maintenance of county-owned property that is not delegated away.<sup>36</sup>

### *ii. County Courthouse*

The county commissioners are explicitly required to “erect” a courthouse and suitable offices for all county officers that are necessary to be at the courthouse.<sup>37</sup> Counties are also required to fund many aspects of the state court system: including facilities for “trial courts, public defenders’ offices, state attorney’s offices,” and clerks’ offices of the circuit and county courts.<sup>38</sup> However, the state is responsible to fund the necessary salaries, costs, and expenses for the state court system.<sup>39</sup>

### *iii. County Jail*

While there is an explicit statute for the construction of a county courthouse, there is no such statutory requirement for a county jail. Moreover, the Florida Statutes previously provided that a jail was required to be erected, but that provision was subsequently deleted by the Legislature.<sup>40</sup> However, “read as a whole,” the Florida Statutes require the county to be responsible to provide for its prisoners.<sup>41</sup> In addition, the county commissioners are required to designate a chief correctional officer.<sup>42</sup> A majority of a county commission may charge the county sheriff with the duties of chief correctional officer, delegating to the sheriff responsibility for the daily operation and maintenance of county jails<sup>43</sup> Counties

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<sup>36</sup> Fla. Stat. § 125.01 (2013).

<sup>37</sup> Fla. Stat. § 138.09 (2013) (“The county commissioners shall erect a courthouse as soon as possible and provide suitable offices for all the county officers who are required by law to keep their offices at the courthouse at the place so selected as the county seat.”).

<sup>38</sup> Fla. Const. art. V, § 14.

<sup>39</sup> *Id.*

<sup>40</sup> 91-25 Fla. Op. Att’y Gen. (1991).

<sup>41</sup> *Id.* (“Accordingly, I am of the opinion that the deletion of the word ‘jail’ in s. 138.09, F.S., does not remove the responsibility of the county to provide for county prisoners.”); Fla. Stat. § 950.01 (county in which offense is committed is to bear the cost of housing inmate if housed in another county).

<sup>42</sup> Fla. Stat. § 951.06 (2015)

<sup>43</sup> Fla. Stat. § 951.061 (2013); *Jones ex rel. Albert v. Lamberti* (S.D. Fla. 2008) (“The Florida Supreme Court has held that “the internal operation of the sheriff’s office ... is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county.” (citing *Weitzenfeld v. Dierks*, 312 So.2d 194, 196 (Fla.1975)). As such, if the County has designated the Sheriff as chief correctional officer, since the County lacks supervisory control over the Sheriff, it then lacks supervisory control over the daily operation of the jail and the supervision of inmates and cannot be held responsible for actions of the Sheriff that gives rise to a claim under 42 U.S. § 1983.); 079-49 Fla. Op. Att’y Gen. (1979) (“A sheriff is responsible under the statute for equipping the county jail and repairing, maintaining, and replacing the equipment necessary for the proper and efficient operation of the jail, and he should include as part of his annual budget the estimated amounts necessary for such operation, equipment, and maintenance during the next fiscal year. Repairs, construction, or capital improvements to the county building in which the jail is located, however, remain the responsibility of the board of county commissioners and are to be paid from general county funds.”).

may also be given the custody of any prisoner via the authority of the United States<sup>44</sup> and can be responsible for the medical expenses of their arrestees.<sup>45</sup>

#### ***iv. Criminal Laws and the Impact on Jail Capacity***

The passage of state laws, such as “Zero Tolerance,” in Florida has led to an increase in inmates for county jails, thus an increase in the costs associated with holding and processing such inmates. When counties are required to comply with State laws that can potentially increase the amount of inmates within the county jail system, this is essentially a mandated compliance standard that can impose significant costs to counties across Florida. Criminal laws are specifically excluded from the requirements of Art. VII, § 18, Fla. Const. prohibiting unfunded state mandates.<sup>46</sup> While the increase in costs may be substantial, challenge is not possible under Art. VII, § 18, Fla. Const.

### **C. Public Safety and Courts**

#### ***i. Emergency Medical Services***

Counties are mandated to comply with the Florida Emergency Communications Number E911 State Plan Act, under which a system for contacting emergency services is required to be created and maintained throughout the state.<sup>47</sup> Boards of county commissioners are required to establish a fund to be used exclusively for receipt and expenditure of 911 fee revenues collected from telephone companies.<sup>48</sup> This money must be appropriated for 911 purposes and incorporated into the annual county budget.<sup>49</sup>

In 2014, the Legislature adopted Chapter 2014-196, Laws of Florida, which added Section 365.172(9), Florida Statutes providing for a prepaid wireless E911 fee. This session law also modified Section 365.173(2), Florida Statutes, such that this new fee is subject to the same requirements as the fee received from telephone companies described above.

Also, the Federal Communications Commission is in the process of issuing proposed rules mandating a "text to 911" system on the states. See Press Release, FCC Proposes Action to Accelerate the Availability of Nationwide Text-to-911 (Dec. 12, 2012) and Text-to-911 Further Notice of Proposed Rulemaking, FCC 12-149

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<sup>44</sup> Fla. Stat. § 950.03 (2015) (“The keeper of the jail in each county within this state shall receive into his or her custody any prisoner who may be committed to the keeper’s charge under the authority of the United States and shall safely keep each prisoner”).

<sup>45</sup> Fla. Stat. § 901.35 (2015) (“Upon a showing that reimbursement from the sources listed in subsection (1) is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid . . . [f]rom the general fund of the county in which the person was arrested”).

<sup>46</sup> Art. VII, § 18(d), Fla. Const.

<sup>47</sup> Fla. Stat. §§ 365.171-.173 (2013).

<sup>48</sup> Fla. Stat. § 365.173(2)(c) (2013) (“Any county that receives funds . . . shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected . . . All fees placed in the fund and any interest accrued shall be used solely for costs [related to 911]. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget.”).

<sup>49</sup> *Id.*

(Dec. 12, 2012). There is a concern that the State of Florida may turn around and impose this mandate on the counties. Implementation of this capability is likely to involve expensive software updates to 911 systems.

### *ii. Animal Control*

There are statutory mandates regarding animals related to public health, stray livestock, dangerous dogs, domestic animal vaccination and euthanasia, animal control, and cruelty ordinances.

The “fence laws” require owners of livestock to prevent their animals from “running at large or straying upon public roads” or be subject to costs and liability.<sup>50</sup> The law imposes a duty on the sheriff or county animal control center to “take up, confine, hold, and impound” stray livestock.<sup>51</sup> Each county commission shall establish and maintain pounds for the keeping of impounded livestock.<sup>52</sup>

While there is no mandate that counties operate an animal control shelter or establish an “animal control authority,” if counties elect to provide local animal control, state law establishes minimum criteria and responsibilities.<sup>53</sup>

Chapter 767, Fla. Stat. (2014) entitled “Damage by Dogs;” establishes statutory liability for owners of dogs who damage livestock or domestic animals.<sup>54</sup> It sets forth “uniform requirements for the owners of dangerous dogs” and establishes procedures governing the investigation, certification, notice and hearing, confinement, and appellate remedies related to dangerous dogs.<sup>55</sup> These procedures govern county animal control authorities. There is a statutory definition of a “dangerous dog,” and the law requires that a dog that has been “declared dangerous attacks or bites a person or a domestic animal without provocation” shall be “destroyed in an expeditious and humane manner.”<sup>56</sup> In all cases, the law requires that a dog that “causes severe injury or death of any human” shall be euthanized.<sup>57</sup>

A county operating an animal control authority must maintain and make certain data available for inspection on a monthly basis regarding the disposition of dogs and cats.<sup>58</sup> The law mandates procedures that will result in “sterilization of all dogs and cats sold or released for adoption” from any county shelter.<sup>59</sup> The euthanasia of dogs and cats is also regulated.<sup>60</sup> Technicians who perform

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<sup>50</sup> § 588.15, Fla. Stat. (2014).

<sup>51</sup> § 588.16, Fla. Stat. (2014).

<sup>52</sup> § 588.21, Fla. Stat. (2014).

<sup>53</sup> In areas not served by a local animal control authority, the sheriff must carry out the duties of the animal control authority. § 767.11(5), Fla. Stat. (2014); Florida Statute, § 828.27 (2015) (outlines the criteria, responsibilities, and definitions related to animal control should a county enact an ordinance regulating same).

<sup>54</sup> Chapter 767, Fla. Stat. (2014).

<sup>55</sup> § 767.12, Fla. Stat. (2014).

<sup>56</sup> § 767.13(1), Fla. Stat. (2015).

<sup>57</sup> § 767.13(2), (3), Fla. Stat. (2014).

<sup>58</sup> § 823.15, Fla. Stat. (2014), Ch. 2015-18 Laws of Fla.

<sup>59</sup> § 823.15, Fla. Stat. (2014)(3), Ch. 2015-18 Laws of Fla.

<sup>60</sup> § 828.058, Fla. Stat. (2014).

euthanasia must complete a 16-hour course approved by the Board of Veterinary Medicine.<sup>61</sup> There are also minimum educational criteria for county animal control officers.<sup>62</sup> They must report all animal bite or diagnosis of disease that “may indicate the presence of a threat to humans.”<sup>63</sup> State criteria governs how animal control officers should respond to “domestic animals which are suffering from an incurable or untreatable condition or are imminently near death from injury or disease” and there is a statutory process governing how animal control officers react to “animals found in distress.”<sup>64</sup>

### ***iii. Fire Protection Services***

There is no explicit requirement for counties to fund an organized fire department.<sup>65</sup> Only if counties adopt fire safety responsibilities will they be mandated to adopt and enforce the Florida Fire Prevention Code and employ a fire safety inspector.<sup>66</sup> There is no constitutional or statutory provision which stipulates which counties have fire safety responsibilities or how a county adopts such a status. Further, for any county that does not employ a fire safety inspector, the State Fire Marshal shall assume the duties of the county with respect to certain fire safety inspections.<sup>67</sup> Lastly, maintenance and fire protection of forests and wild lands within a county is funded by state and federal funds.<sup>68</sup>

### ***iv. Emergency Management***

During the World War II era, Florida enacted legislation to create the State Civil Defense Council in response to the possibility of emergencies resulting from enemy action or natural causes. Under the Florida Civil Defense Act of 1951, counties were required to create “civil defense councils” consisting of county commissioners and other elective county officials.<sup>69</sup> By the early 1980s, Florida completely revised its emergency operations to include county disaster

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<sup>61</sup> § 828.058, Fla. Stat. (2014).

<sup>62</sup> See § 828.27, Fla. Stat. (2014). Biennial continuing education requirements are also established).

<sup>63</sup> § 381.0031, Fla. Stat. (2014).

<sup>64</sup> § 828.05, Fla. Stat. (2014), § 828.073, Fla. Stat. (2014).

<sup>65</sup> See Fla. Stat. § 633.112(b) (2013) (“If the fire or explosion occurs in a municipality, county, or special district that *does not have an organized fire department* or designated arson investigations unit within its law enforcement providers, the municipality, county, or special district may request the State Fire Marshal to conduct the initial investigation.”) (emphasis added).

<sup>66</sup> Fla. Stat. § 633.208 (2013) (“[E]ach municipality, county, and special district *with firesafety responsibilities* shall enforce the Florida Fire Prevention Code as the minimum firesafety code required”) (emphasis added).

<sup>67</sup> Fla. Stat. § 633.104(7) (2013) (“[I]n any county, municipality, or special district that does not employ or appoint a firesafety inspector certified under s. 633.216, the State Fire Marshal shall assume the duties of the local county”). Fla. Stat. § 633.112(6)(b) (2013) (“County, municipality, or special district without an organized fire department or arson investigations unit may ask State Fire Marshal to conduct initial investigations of fire or explosion.”)

<sup>68</sup> Fla. Stat. § 125.27 (2013) (Total costs of “the establishment and maintenance of countywide fire protection of all forest and wild lands within said county” shall be “funded by state and federal funds.”).

<sup>69</sup> *Id.*

preparedness responsibilities and a more inclusive “all hazards” approach to emergency management.<sup>70</sup>

Today, in accordance with the “State Emergency Management Act,” counties are mandated to create and maintain an emergency management agency and develop a county emergency management plan consistent with the state’s plan – all pursuant the board of county commissioners’ direction.<sup>71</sup> This county agency is also required to coordinate with different entities in order to ensure there is suitable public shelter in case of hurricane or disaster.<sup>72</sup> Moreover, it is explicitly stated in the Florida Statutes that counties are responsible, in coordination with their local medical and health departments, for developing and planning for special needs shelters.<sup>73</sup> Because Federal and State grants do not always cover the costs of emergency management, counties may be forced to use their ad valorem funds in order to comply with the program.

In 2014, the Florida Legislature adopted Chapter 2014-163, Laws of Florida, which revised Section 252.355, Florida Statutes concerning the registration of persons with special needs who would need special assistance in an emergency. The new statute provided for the State Division of Emergency Management to create a statewide database of such persons and have local agencies upload patient names and medical data to this state database. However, uploading the medical data involves the transmission of health information protected by the federal Health Insurance Portability and Accountability Act (HIPAA) and is therefore likely a violation of this statute. It is noted that HIPAA has its own federal preemption of state law provision, 42 U.S.C. § 1320d–7 (2015), which, together with HIPAA’s serious penalty provisions, 42 U.S.C. § 1320d–6 (2015), would seem to justify non-compliance with this particular provision of state law. A HIPAA implementing regulation, 45 C.F.R. § 164.512 (2015), provides for the use or disclosure of HIPAA protected information under specific circumstances where other law requires this use or disclosure. There are provisions in this regulation for public health and health oversight activities, but it is not clear these provisions cover emergency management. Chapter 2014-163 should have been written to ensure consistency and compliance with HIPAA.

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<sup>70</sup> FAC, FLORIDA COUNTY GOVERNMENT GUIDE 159 (2012). This new approach to a broader emergency management program “was especially productive for Florida, given our high susceptibility to all forms of natural disasters (e.g., hurricanes, floods, wildland fires, tornadoes, etc.)” *Id.*

<sup>71</sup> Fla. Stat. § 252.38 (2013) (“[E]ach county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.”).

<sup>72</sup> Fla. Stat. § 252.385 (2013) (“The local emergency management agency shall coordinate with these entities to ensure that designated [public shelter space] facilities are ready to activate prior to a specific hurricane or disaster.”).

<sup>73</sup> Fla. Stat. § 381.0303(2)(b) (2013) (“County health departments shall, in conjunction with the local emergency management agencies, have the lead responsibility for coordination of the recruitment of health care practitioners to staff local special needs shelters. County health departments shall assign their employees to work in special needs shelters when those employees are needed to protect the health and safety of persons with special needs. County governments shall assist the department with nonmedical staffing and the operation of special needs shelters.”).

### ***v. Juvenile Detention***

Counties are statutorily mandated to contribute financial support to juvenile detention care, including a portion of detention care (respite beds), unless the county is deemed “fiscally constrained.”<sup>74</sup> Furthermore, counties are required to fund juveniles’ predisposition assessment centers and provide a broad array of intake services.<sup>75</sup> Counties may establish and be responsible for all operational costs associated with a juvenile detention facility, but are not required to create such facilities.<sup>76</sup>

Chapter 985, Fla. Stat. (2014) states that the state and the counties have a “joint obligation . . . to contribute to the financial support of the detention care provided for juveniles.”<sup>77</sup> Counties may elect to provide detention care for preadjudicated juveniles at their own expense or under contract with another county.<sup>78</sup> If a county elects to utilize the state system, it must pay the “actual costs” of secure juvenile detention for its residents incurred “prior to final court disposition.”<sup>79</sup> The costs for “fiscally constrained counties” are borne by the state.<sup>80</sup> Counties participating in the shared juvenile detention system must include the cost in their annual budget and remit estimated monthly payments to the Department of Juvenile Justice.<sup>81</sup> An annual reconciliation process may generate a credit or an additional charge.

### ***vi. State Courts System***

In November, 1998, the Florida electorate approved Revision 7 to Article V of the Florida Constitution. Article V provides for the judicial branch of state government. Revision 7 was designed to allocate state’s court system funding mechanism among the state, counties, and users of the courts. Revision 7 was fully implemented by the Legislature in 2004. The Florida Constitution now requires the state to fund the state courts system, state attorneys’ offices, public defenders’ offices and court-appointed counsel, except as provided in section 14(c) of Article V.

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<sup>74</sup> Fla. Stat. § 985.686 (2013) (“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...Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition.”).

<sup>75</sup> Fla. Stat. § 985.135(2) (2013) (“The department shall work cooperatively with substance abuse programs, mental health providers, law enforcement agencies, schools, health service providers, state attorneys, public defenders, and other agencies serving youth to establish juvenile assessment centers. Each current and newly established center shall be developed and modified through the local initiative of community agencies and local governments and shall provide a broad array of youth-related services appropriate to the needs of the community where the center is located.”).

<sup>76</sup> Fla. Stat. § 985.688 (2013) (“A county or municipal government may establish and operate a juvenile detention facility in compliance with this section, if such facility is certified by the department.”).

<sup>77</sup> § 985.686, Fla. Stat. (2014).

<sup>78</sup> § 985.686(10), Fla. Stat. (2014).

<sup>79</sup> § 985.686(3), (5), Fla. Stat. (2014). See, *Okaloosa County etc. v. Department of Juvenile Justice*, 131 So. 3d 818 (Fla. 1<sup>st</sup> DCA 2014).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

County funding is limited to the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions.<sup>82</sup> Counties are also statutorily required to pay the reasonable and necessary salaries, costs, and expenses of the state courts system, including associated staff and expenses, to meet "local requirements". Local requirements are those expenses associated with specialized court programs, prosecution needs, defense needs, or resources "required of a local jurisdiction as a result of special factors or circumstances"<sup>83</sup> (1) when imposed pursuant to an express statutory directive; or (2) when circumstances in the local jurisdiction necessitate the implementation of programs impacting the resources of the state courts system. Local requirements specifically include legal aid programs and alternative sanctions coordinators.<sup>84</sup> The expenditures associated with the county funding of the state courts system is required to increase each year by 1.5 percent over the prior county fiscal year.<sup>85</sup>

## **D. Health and Human Services**

### ***i. Medicaid***

Around half the states in the nation require counties to share in the cost of the Medicaid program; Florida is one of these states. Today, counties are mandated to supply an annual contribution to the State in order to fund Florida's Medicaid program. This contribution will collectively cost the collective counties as much as \$277 million for the 2014-2015 fiscal year.<sup>86</sup> In 2012, Florida began collecting these Medicaid obligations automatically, directly from each county's revenue sharing through the Agency for Health Care Administration and Department of Revenue, leaving a county unable to review its "bill" before it was automatically paid.<sup>87</sup> Moreover, a year later, legislation passed changing the method of calculating county Medicaid contributions altogether. Specifically, beginning in the 2013-14 fiscal year, counties began paying contributions calculated according to statutorily-set percentages, which are based on AHCA's actual historical collections; however, beginning in the 2015-16 fiscal year, these percentages will begin transitioning to a

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<sup>82</sup> For purposes of section 29.008(1), Florida Statute, the term "circuit and county courts" includes the offices and staffing of the guardian ad litem programs, and the term "public defenders' offices" includes the offices of criminal conflict and civil regional counsel. The county designated as the headquarters for each appellate district is also required to fund those costs for the appellate division of the public defenders' office in that county.

<sup>83</sup> Fla. Stat. § 29.008(2) (2014) (describing in greater detail what the counties are responsible for in the state courts system pursuant to Article V, Section 14 of the Florida Constitution, with regard to local requirements).

<sup>84</sup> Fla. Stat. § 29.008(3) (2014).

<sup>85</sup> Fla. Stat. § 29.008(4) (2014).

<sup>86</sup> Fla. Stat. § 409.915 (2013) ("Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, the state shall charge the counties an annual contribution in order to acquire a certain portion of these funds.").

<sup>87</sup> HB 5301 (Fla. 2012).

system that will ultimately be based solely on each county's respective percentage share of residents who are enrolled in Medicaid.<sup>88</sup> This Medicaid enrollment formula is estimated to increase Medicaid costs for many counties, although other counties will remain stable or see decreased costs.

### ***ii. Indigent Care***

Counties are mandated to reimburse participating hospitals which provide care for indigent patients for their respective citizens.<sup>89</sup>

### ***iii. County Health Units***

County health department units are required to be established within counties to provide for environmental health, communicable disease control, and primary care services.<sup>90</sup> These county public health units, can be but not always are, agencies of county government, not state agencies.<sup>91</sup>

### ***iv. Mental Health and Substance Abuse Services***

"The Community Substance Abuse and Mental Health Services Act"<sup>92</sup> states that local governments are required to participate in the funding of Florida's mental health and substance abuse system.<sup>93</sup> "Local governing bodies" are required to supply 25% of the community programs' funding, with the state disbursing the other 75%.<sup>94</sup> Counties are not solely responsible to produce these "local matching funds," as there are many other sources – e.g. city commissions and special districts – contributing to local match.<sup>95</sup>

"The Florida Mental Health Act" (also known as "The Baker Act")<sup>96</sup> was enacted to "reduce the occurrence, severity, duration, and disabling aspects of

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<sup>88</sup> HB 5301 (Fla. 2012).

<sup>89</sup> Fla. Stat. § 154.306 (2013) ("Ultimate financial responsibility for treatment received at a participating hospital or a regional referral hospital by a qualified indigent patient . . . is the obligation of the county of which the qualified indigent patient is a resident.").

<sup>90</sup> See Fla. Stat. § 154.01 (2013) (providing that "[a] functional system of county health department services shall be established which shall include the following three levels of service and be funded as" environmental health services, communicable disease control services, and primary care services).

<sup>91</sup> 80-28 Fla. Op. Att'y Gen. (1980).

<sup>92</sup> Fla. Stat. § 394.65 (2013).

<sup>93</sup> 77-97 Fla. Op. Att'y Gen. (1977); Fla. Stat. § 394.76(9) (2013) ("State funds for community alcohol and mental health services shall be matched by local matching funds . . . The governing bodies within a district or subdistrict shall be required to participate in the funding of alcohol and mental health services under the jurisdiction of such governing bodies. The amount of the participation shall be at least that amount which, when added to other available local matching funds, is necessary to match state funds.").

<sup>94</sup> Fla. Stat. § 394.76(3) (2013) ("All other contracted community alcohol and mental health services and programs, except as identified in s. 394.457(3), shall require local participation on a 75-to-25 state-to-local ratio.").

<sup>95</sup> Fla. Stat. § 394.67(13) (2014) ("Local matching funds" means funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources."). However, the mental health agencies do look to the counties to provide those local matching funds, even if they do come from other sources. – regardless of the language of the statutes and applicable rules.

<sup>96</sup> Fla. Stat. § 394.451 (2013).



mental, emotional, and behavioral disorders.”<sup>97</sup> Counties are not the primary source of funding for the treatment of Baker Act commitment, but there are different exceptions in which a county could be liable for such medical payments.<sup>98</sup>

#### ***v. Unclaimed Bodies***

If the anatomical board does not accept an unclaimed body, then the board of county commissioners must dispose of the body of persons who die within the confines of their county.<sup>99</sup> The county is also responsible for making a reasonable effort to identify the body, as well as accepting responsibility to arrange for the body’s burial or cremation.<sup>100</sup>

#### ***vi. Medical Examiners***

The fees, salaries, and expenses associated with the medical examiner must be paid from the funds under the control of the board of county commissioners.<sup>101</sup> These medical examiner expenses, including transportation and laboratory facilities costs, are borne by the county.<sup>102</sup>

#### ***vii. Child Protective Services***

Counties are mandated to pay for the initial costs of the examination of allegedly abused, abandoned, or neglected children; however, parents or legal custodians are required to reimburse the counties for the costs of such examination.<sup>103</sup>

#### ***viii. Veteran Services***

Veteran Service Officers (VSOs) may be employed by the board of county commissioners to assist their residents by providing advocacy and counseling to

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<sup>97</sup> Fla. Stat. § 394.453 (2013).

<sup>98</sup> 93-49 Fla. Op. Att’y Gen. (1993) (“[A] county is not primarily responsible for the payment of hospital costs for the treatment of an involuntary Baker Act commitment. However, a county may be liable for such payments in the event a person in the county is arrested for a felony involving violence against another person, is taken to a receiving facility and specified sources for reimbursement are not available.”). A county shall also designate a single law enforcement agency to transport persons held under the Baker Act to treatment facilities. Fla. Stat. § 394.462 (2013).

<sup>99</sup> Fla. Stat. § 406.50(5) (2013) (“If the anatomical board does not accept the unclaimed remains, the board of county commissioners or its designated county department of the county in which the death occurred or the remains were found may authorize and arrange for the burial or cremation of the entire remains.”).

<sup>100</sup> 91-87 Fla. Op. Att’y Gen. (1991).

<sup>101</sup> Fla. Stat. § 406.08 (2013) (“Fees, salaries, and expenses may be paid from the general funds or any other funds under the control of the board of county commissioners.”).

<sup>102</sup> *Id.* (“When a body is transported to the district medical examiner or his or her associate, transportation costs, if any, shall be borne by the county in which the death occurred. . . . Autopsy and laboratory facilities utilized by the district medical examiner or his or her associates may be provided on a permanent or contractual basis by the counties within the district.”).

<sup>103</sup> Fla. Stat. § 39.304(5) (2013) (“The county in which the child is a resident shall bear the initial costs of the examination of the allegedly abused, abandoned, or neglected child; however, the parents or legal custodian of the child shall be required to reimburse the county for the costs of such examination . . .”).

veterans and their families.<sup>104</sup> While VSOs are not required to be employed by the counties, currently all sixty-seven counties employ at least one VSO.

### ***ix. Mosquito Control***

In an effort to suppress disease-bearing and pestiferous arthropods, “mosquito control districts” were created.<sup>105</sup> Counties are not mandated to create such mosquito control agencies, but if they do – there are many sources of funding (including tax levying and state matching funds).<sup>106</sup> In the event state funds do not fully fund mosquito control budgets, counties will need to fund the difference. “County commissioners’ mosquito and arthropod control budgets . . . shall be incorporated into county budgets.”<sup>107</sup>

## **E. Parks, Recreation, and Libraries**

Although Chapter 125 of the Florida Statutes authorizes counties to provide parks and recreational areas, there is no specific statute which mandates that counties shall fund such facilities.<sup>108</sup> Moreover, it is the Division of Recreation and Parks of the Department of Environmental Protection that assumes the duties in accordance with “all public parks, including all monuments, memorials, sites of historic interest and value” owned by the state, to which the county is capable of purchasing.<sup>109</sup> However, parks are a required element of a county’s mandated comprehensive plan, and therefore must be considered for future development within a county.<sup>110</sup>

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<sup>104</sup> Fla. Stat. § 292.11 (2013) (“Each board of county commissioners may employ a county veteran service officer; provide office space, clerical assistance, and the necessary supplies incidental to providing and maintaining a county service office; and pay said expenses and salaries from the moneys hereinafter provided for.”).

<sup>105</sup> Fla. Stat. § 388.021 (2013) (“herefore, any city, town, or county, or any portion or portions thereof, whether such portion or portions include incorporated territory or portions of two or more counties in the state, *may* be created into a special taxing district for the control of arthropods under the provisions of this chapter.”) (emphasis added).

<sup>106</sup> See generally Fla. Stat. § 388.261 (2013) (“Every county or district budgeting local funds to be used exclusively for the control of mosquitoes and other arthropods, under a plan submitted by the county or district and approved by the department, is eligible to receive state funds and supplies, services, and equipment on a dollar-for-dollar matching basis to the amount of local funds budgeted.”).

<sup>107</sup> Fla. Stat. § 388.201 (2013).

<sup>108</sup> Fla. Stat. § 125.01(1)(f) (2013) (“Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.”).

<sup>109</sup> Fla. Stat. § 258.004(1) (2013) (“It shall be the duty of the Division of Recreation and Parks of the Department of Environmental Protection to supervise, administer, regulate, and control the operation of all public parks, including all monuments, memorials, sites of historic interest and value, sites of archaeological interest and value owned, or which may be acquired, by the state, or to the operation, development, preservation, and maintenance of which the state may have made or may make contribution or appropriation of public funds.”).

<sup>110</sup> See *infra* Part III.F; see also Fla. Stat. § 163.3177(6)(e) (2013) (“A recreation and open space element indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, waterways, and other recreational facilities.”).

The state is responsible for a State Library that will be located within Tallahassee and is administered by the Division of Library.<sup>111</sup> However, there is no mandated requirement for a county library.

## F. Growth Management

### i. Generally

Florida adopted the Local Government Comprehensive Planning and Land Development Regulation Act in 1985, which mandated counties to create local planning agencies to prepare and manage a “comprehensive plan.”<sup>112</sup> In 2011, the Act was renamed to the “Community Planning Act,” with which all 67 counties, Walt Disney World, and Reedy Creek Improvement District must comply. A comprehensive plan is required to consider many different elements in order to guide future development, including: capital improvements, future land use plan, transportation, conservation, recreation and open space, housing, intergovernmental coordination, sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge, and waste elements.<sup>113</sup> In addition to these core elements, all coastal counties are required to include a coastal management element in the plan. In 1995, a major revision of the Act required counties to consider joint planning efforts with school districts and interlocal agreements for all such joint planning efforts. “The goals, objectives, policies, standards, findings, and conclusions within the proposed comprehensive plan must be supported by relevant and appropriate data which is gathered in a professionally accepted manner.”<sup>114</sup> Also, while a comprehensive plan is required to include affordable housing considerations, counties are not mandated to increase affordable housing.<sup>115</sup> However, despite the permissive language regarding the provision of affordable housing found in Section 125.01055, the Community Planning Act effectively requires a county to address this issue or be found not in compliance with state law. Specifically, Section 163.3177(6)(f) requires the county’s housing element to include “standards and strategies” for “[t]he elimination of substandard dwelling conditions” and “[t]he provision of adequate sites for future housing, including affordable workforce housing as defined in Section 380.0651(3)(h), housing for low

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<sup>111</sup> Fla. Stat. § 257.01 (2013) (“There is created and established the State Library which shall be located at the capital. The State Library shall be administered by the Division of Library and Information Services of the Department of State.”).

<sup>112</sup> Richard Grosso, *Florida’s Growth Management Act: How Far We Have Come, and How Far We Have Yet to Go*, 20 NOVA L. REV. 589, 591 (1996); Fla. Stat. § 163.3174 (2013) (“The governing body of each local government . . . shall designate and by ordinance establish a ‘local planning agency’ . . . [which] shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan.”).

<sup>113</sup> See Fla. Stat. § 163.3177 (2013) (containing the many elements that the comprehensive plan shall provide for the “orderly and balanced future economic, social, physical, environmental, and fiscal development” of the county).

<sup>114</sup> Grosso, *supra* note 112.

<sup>115</sup> Fla. Stat. § 125.01055 (2013) (“[A] county *may* adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.”) (emphasis added).

income, very low income, moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities.” Accordingly, while there is no specific mandate that a county provide affordable housing, the mandatory compliance provisions of Section 163.3177(6)(f) have the effect of requiring counties to take action and spend resources for this purpose.

The Community Planning Act also has several implementing requirements that cause counties to expend resources. The first of these is concurrency, which is a requirement that certain public facilities be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent.<sup>116</sup> As a cornerstone of the 1985 Act, concurrency has been a controversial provision for both local governments and the development community. In essence, if the required facilities are not in place concurrent with the development, the local government cannot allow the development to proceed, which for some counties has resulted in temporary building moratoria. Under the original law, the county was required to apply concurrency to the following public facilities: sanitary sewer, solid waste, drainage, potable water, recreation and open space, and transportation. However, the 2011 Community Planning Act eliminated the state mandate for transportation concurrency, while allowing communities to retain it by local option. Although the transportation mandate has been lifted<sup>117</sup>, state law still requires counties to apply concurrency for water, sewer, drainage, and solid waste. To ensure the adopted levels-of-service for these services are maintained, the county’s capital improvements element (CIE) must include a 5-year schedule of projects and their accompanying funding source.

The second implementing requirement of the comprehensive plan is for each county to develop, adopt, and maintain a set of land development regulations that ensures the goals, objective, and policies of the plan are carried out in a consistent manner. Given the breadth and extent of the comprehensive plan and all of its requirements, the scope of the land development regulations often match or exceed the size of the plan and, as such, have comparable local cost requirements.

The procedure to amend a county’s comprehensive plan has historically been a long, arduous process full of mandated drafts, public hearings, comment periods, and state review.<sup>118</sup> This process (usually exceeding six months) was then revised for an “expedited state review process” in 2011; and now most amendments can be proposed and decided within a shorter amount of time and with fewer mandated processes.<sup>119</sup>

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<sup>116</sup> See *Fla. Stat. §163.3180(2)*

<sup>117</sup> However, a local government chooses to retain transportation concurrency pursuant to Sec. 163.3180 and an applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements, the local government may not require payment or construction of transportation facilities whose costs would be greater than a development’s proportionate share of the improvements necessary to mitigate the development’s impacts. This is an unfunded mandate.

<sup>118</sup> See generally *Fla. Stat. § 163.3184* (2013).

<sup>119</sup> See *Fla. Stat. § 163.3184(3)* (2013). The expedited state review process applies to all future plan amendments “except those that are small scale amendments, in areas of critical state concern, propose a rural

## ***ii. Development Permits***

Sec. 125.022 contains several mandates as follows:

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county shall attach such a disclaimer to the issuance of a development permit and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

## **G. Environmental Protection**

In general, the mandates considering environmental interests are handed down at the federal level – e.g. the Clean Water Act – costing both the state and local governments billions of dollars per year to conform to the standards and requirements provided by these environmental protection-focused acts. Florida’s Department of Environmental Protection (DEP) has wide-ranging responsibilities for the state’s air, land, and water qualities; however, DEP is mandated to work closely with local governments to collect adequate data and enforce regulations for several aspects of environmental protection.<sup>120</sup>

Counties are not mandated to establish or administer any form of local air and water pollution control program; however, they may do so and enforce stricter

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land stewardship area, propose a sector plan, are EAR based amendments, or are new plans.” FLORIDA COUNTY GOVERNMENT GUIDE, Florida Association of Counties (2012).

<sup>120</sup> See generally Fla. Stat. §§ 373 & 403 (2013).

ordinances as long as such a program complies with the state’s “Florida Air and Water Pollution Control Act.”<sup>121</sup>

***i. Solid Waste Disposal Facilities***

A key responsibility of counties is to provide for the creation and operation of solid waste disposal facilities which can reasonably meet the needs of their respective incorporated and unincorporated areas.<sup>122</sup>

***ii. Recycling***

Counties are also mandated to implement a recycling program with goals of recycling certain percentages of recyclable materials annually – e.g. 75% by 2020 – and ensure that its municipalities participate.<sup>123</sup>

***iii. Beach Renourishment***

Counties have accrued several responsibilities with respect to environmental protection pursuant to the Community Planning Act.<sup>124</sup> Counties are responsible for partial funding of the restoration and nourishment of beach erosion along with the state.<sup>125</sup> Counties, along with DEP and water management districts, are also responsible for the development of stormwater management.<sup>126</sup>

***iv. Water Quality***

The federal Clean Water Act (CWA) “establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.”<sup>127</sup> The Total Maximum Daily Load (TMDL) program was enacted to establish a calculation for the maximum amount of a particular pollutant that water bodies can receive in order to maintain the water quality standards for that water body’s designated use.<sup>128</sup> Counties must comply with the requirements from programs like the CWA and TMDL in order to regulate water quality, a task that can be quite costly.

In practice, many counties impose a stormwater assessment or fee to maintain stormwater flow and treatment facilities. However, a bonda fide farm

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<sup>121</sup> Fla. Stat. § 403.182 (2013) (“Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act.”).

<sup>122</sup> Fla. Stat. § 403.706(1) (2013) (“The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.”).

<sup>123</sup> Fla. Stat. § 403.706(2)(a) (2013) (“Each county shall implement a recyclable materials recycling program that shall have a goal of recycling recyclable solid waste”).

<sup>124</sup> See *supra* Part.III.F.

<sup>125</sup> Fla. Stat. § 161.101 (2013) (“The local government in which the beach is located shall be responsible for the balance of such [beach management and erosion control] costs.”).

<sup>126</sup> Fla. Stat. § 403.0891 (2013) (“The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.”).

<sup>127</sup> *Summary of the Clean Water Act*, ENVIRONMENTAL PROTECTION AGENCY (last visited Apr. 17, 2014), <http://www2.epa.gov/laws-regulations/summary-clean-water-act>.

<sup>128</sup> *Total Maximum Daily Loads*, NATIONAL AGRICULTURAL LIBRARY (last visited Apr. 17, 2014), <http://wqic.nal.usda.gov/social-and-legal-issues/total-maximum-daily-loads>.

operation on land classified as agricultural is exempt from such an assessment or fee if the farm operation implements best management practices as adopted by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management district.<sup>129</sup> Despite the statutory presumption, a farm operation that is implementing best management practices and deemed exempt from a stormwater assessment or fee may still be contributing to the poor water quality within a county. This exemption amounts to an unfunded mandate by the legislature because a county is required to restore and maintain water quality but cannot impose an assessment or fee on major contributors – agricultural lands and concentrated animal feeding operations – or, in many cases, confirm that a farm is actually utilizing best management practices.

## **H. Transportation**

### ***i. County Roads***

County commissioners assume the control and are fully responsible for the establishment and maintenance of all county roads, bridges, tunnels, bicycle paths, sidewalks, and other structures.<sup>130</sup>

### ***ii. Ports***

The governing body must decide that it is in the best interests of their respective county to exercise the powers to operate a port facility.<sup>131</sup>

## **I. Constitutional Officers**

### ***i. Salaries***

Chapter 145 of the Florida Statutes lays out the compensation requirements for county officials set by the legislature.<sup>132</sup> Each member of the board of county commissioners receives a salary “based on the population of his or her county.”<sup>133</sup> Moreover, the legislature has also designed a system based on population to assign salaries to the other constitutional officer, which each officer’s respective county is required to fund.<sup>134</sup>

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<sup>129</sup> §163.3162(3)(c), F.S. (2014)

<sup>130</sup> Fla. Stat. § 336.02(1)(a) (2013) (“The commissioners are invested with the general superintendence and control of the county roads and structures within their respective counties, and they may establish new roads, change and discontinue old roads, and keep the roads in good repair in the manner herein provided. They are responsible for establishing the width and grade of such roads and structures in their respective counties.”).

<sup>131</sup> Fla. Stat. § 315.04 (2013).

<sup>132</sup> Fla. Stat. § 145.012 (2013) (“This chapter applies to all officials herein designated in all counties of the state, except those officials whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter and except officials . . . of counties which have a chartered consolidated form of government”).

<sup>133</sup> Fla. Stat. § 145.031 (2013).

<sup>134</sup> See Fla. Stat. § 145.051 (2013) (laying out the salary requirements for the clerk of court); see also Fla. Stat. § 145.071 (2013) (laying out the salary requirements for the sheriff); see also Fla. Stat. § 145.09 (2013) (laying out the salary requirements for the supervisor of elections); see also Fla. Stat. § 145.10 (2013) (laying out

### ***ii. Budgets***

Counties are required to establish a budget that must be “prepared, summarized, and approved by the board of county commissioners of each county.”<sup>135</sup> Each constitutional officer is required to submit their respective budget to the board of county commissioners by certain dates in order for the board, and also a county budget officer, to prepare the tentative budget.<sup>136</sup> After completing a summary of the adopted budgets, the board of county commissioners is mandated to advertise the summary statement and hold public hearings in order to hear requests or complaints.<sup>137</sup>

### ***iii. Clerks***

The division or separation of the clerk’s duties as clerk of court from the clerk’s functions as auditor and custodian of all county funds is established in two articles of the Florida Constitution. One provides that “the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds,” and another, which states that, “the clerk of the circuit court shall be ... auditor, recorder and custodian of all county funds.”<sup>138</sup> Based on these two constitutional provisions, absent alternative designation under county charter or special law approved by a vote of the electors, the clerk of court is the clerk of the board as a result of his or her office, and its auditor and the custodian of all county funds.

There are several implementing statutory provisions that give shape to the role of the clerk in this capacity as clerk of the board and to the numerous and diverse powers and duties of the clerk concerning fiscal matters of the board. For example, the clerk is required to act as the board’s accountant and keep its accounts,<sup>139</sup> checks or warrants drawn on county accounts must be “attested by the clerk,”<sup>140</sup> and all “county accounts of each and every depository... shall at all times be subject to the inspection and examination by the county auditor[.]”<sup>141</sup> To emphasize the significance of the clerk as county auditor, the Legislature imposes personal liability for the payments of any claim or bill against county funds in excess of the amount permitted by law, or any illegal charge against the county, or

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the salary requirements for the property appraiser); *see also* Fla. Stat. § 145.11 (2013) (laying out the salary requirements for the tax collector).

<sup>135</sup> Fla. Stat. § 129.01 (2013).

<sup>136</sup> Fla. Stat. § 129.03 (2013) (“On or before June 1 of each year, the sheriff, the clerk of the circuit court and county comptroller, the tax collector . . . and the supervisor of elections shall each submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.”).

<sup>137</sup> Fla. Stat. § 129.03 (2013) (“Upon receipt of the tentative budgets and completion of any revisions, the board shall prepare a statement summarizing all of the adopted tentative budgets. . . . The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county . . . The board shall hold public hearings to adopt tentative and final budgets”).

<sup>138</sup> Art.V, § 16, Fla. Const.; Art. VIII, § 1(d), Fla. Const.

<sup>139</sup> Fla. Stat. §§ 28.12, 125.17 (2014).

<sup>140</sup> *Id.*, § 136.06(1).

<sup>141</sup> Fla. Stat. § 136.08 (2014).



any claim not authorized by law and subjects the clerk to criminal penalties if improper payment is made willfully and knowingly.<sup>142</sup>

#### ***iv. Sheriffs***

Sheriffs are given a wide variety of powers and duties which they may execute within their respective county. Chapter 30 of the Florida Statutes lays out the core duties of the sheriff, the most recognizable aspect being his or her duty towards law enforcement within their county.<sup>143</sup> Other responsibilities include assessing legal process documents (writs, warrants, subpoena, etc.),<sup>144</sup> providing court security,<sup>145</sup> and, at the election of the county commission, keeping the county jail.<sup>146</sup> Sheriffs cooperate with the board of county commissioners by being required to submit their proposed budget for all expenditures related to the operation of the office.<sup>147</sup>

#### ***v. Tax Collector***

The tax collector has the “authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.”<sup>148</sup> Recently, county tax collectors have taken over the driver’s license duties of the state-funded Department of Motor Vehicles, which adds hundreds of thousands in expenses per year.<sup>149</sup>

#### ***vi. Property Appraisers***

Property appraisers are responsible for identifying, locating, and fairly valuing all property, both real and personal, within the county for tax purposes. Property appraisers must send Truth in Millage (TRIM) notices to all property owners within their county.

#### ***vii. Supervisor of Elections***

The Supervisor of Elections is compensated by the board of county commissioners and is in charge of “update[ing] voter registration information, enter[ing] new voter registrations into the statewide voter registration system, and act[ing] as the official custodian of documents received by the supervisor related to the registration of electors and changes in voter registration status of electors of the

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<sup>142</sup> Fla. Stat. § 129.09 (2014).

<sup>143</sup> See Fla. Stat. § 30.15(1)(e) (2015) (generally stating that sheriffs are the “conservators of the peace in their counties”).

<sup>144</sup> Fla. Stat. § 30.15(1)(a)-(b) (2015).

<sup>145</sup> Fla. Stat. § 30.15(1)(c) (2015).

<sup>146</sup> Fla. Stat. § 951.061

<sup>147</sup> Fla. Stat. § 30.49(2)(a) (2015).

<sup>148</sup> Fla. Stat. § 197.332 (2013).

<sup>149</sup> Pallavi Agarwal, *DMV Office Closing Feb. 28*, HIGHLANDS TODAY (March 12, 2013), <http://highlandstoday.com/hi/local-news/dmv-office-closing-feb--620599>.

supervisor’s county.”<sup>150</sup> The Supervisor is also the custodian of the voting system and appoints necessary deputies to prepare the voting system.<sup>151</sup>

After the 2000 presidential election, the Help America Vote Act (HAVA) established several federal mandates in which the states (which therefore had the trickle-down effect to the counties) were required to update many aspects of their election procedures – e.g. voting machines, registration, and poll worker training.<sup>152</sup>

#### IV. EXAMPLE OF COUNTY EXPENDITURES

##### 2012 Leon County Expenditures<sup>153</sup>

	General	Special Revenue	Capital Projects	Enterprise	Internal Service	Account Total
<b>General Government Services (Not Court-Related)</b>	<b>\$29,973,239</b>	<b>\$2,167,997</b>	<b>\$2,736,372</b>	<b>\$-</b>	<b>\$5,480,684</b>	<b>\$40,358,292</b>
Legislative	\$1,279,969	\$-	\$-	\$-	\$-	\$1,279,969
Executive	\$1,122,298	\$-	\$-	\$-	\$-	\$1,122,298
Financial and Administrative	\$16,121,122	\$10,872	\$17,553	\$-	\$201,205	\$16,350,752
Legal Counsel	\$1,594,371	\$-	\$-	\$-	\$-	\$1,594,371
Comprehensive Planning	\$881,792	\$-	\$-	\$-	\$-	\$881,792
Non-Court Information Systems	\$4,267,971	\$128,022	\$-	\$-	\$-	\$4,395,993
Other General Government Services	\$4,705,716	\$2,029,103	\$2,718,819	\$-	\$5,279,479	\$14,733,117
<b>Public Safety</b>	<b>\$58,101,981</b>	<b>\$32,431,512</b>	<b>\$8,180,156</b>	<b>\$-</b>	<b>\$-</b>	<b>\$98,713,649</b>
Law Enforcement	\$28,415,589	\$2,014,069	\$-	\$-	\$-	\$30,429,658
Fire Control	\$-	\$8,120,168	\$-	\$-	\$-	\$8,120,168
Detention and/or Correction	\$29,153,996	\$3,610,105	\$24,957	\$-	\$-	\$32,789,058
Protective Inspections	\$-	\$1,211,791	\$-	\$-	\$-	\$1,211,791
Emergency and Disaster Relief Services	\$-	\$1,771,174	\$4,093,202	\$-	\$-	\$5,864,376
Ambulance and Rescue Services	\$-	\$15,478,033	\$4,061,997	\$-	\$-	\$19,540,030
Medical Examiners	\$532,396	\$-	\$-	\$-	\$-	\$532,396
Other Public Safety	\$-	\$226,172	\$-	\$-	\$-	\$226,172
<b>Physical Environment</b>	<b>\$2,289,029</b>	<b>\$12,521,641</b>	<b>\$3,971,665</b>	<b>\$11,028,089</b>	<b>\$-</b>	<b>\$29,810,424</b>
Garbage / Solid Waste Control Services	\$-	\$-	\$-	\$11,028,089	\$-	\$11,028,089
Sewer / Wastewater Services	\$-	\$228,535	\$4,174	\$-	\$-	\$232,709

<sup>150</sup> Fla. Stat. § 98.015 (2013).

<sup>151</sup> Fla. Stat. § 101.34 (2013).

<sup>152</sup> Fla. Stat. § 98.015(10) (2013) (“Each supervisor shall ensure that all voter registration and list maintenance procedures conducted by such supervisor are in compliance with any applicable requirements prescribed by rule of the department through the statewide voter registration system or prescribed by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Help America Vote Act of 2002.”).

<sup>153</sup> *Expenditures and Revenues Reported by Florida’s County Governments*, Office of Economic & Demographic Research (last visited on April 18, 2014), <http://edr.state.fl.us/Content/local-government/data/revenues-expenditures/cntyfiscal.cfm>.

	General	Special Revenue	Capital Projects	Enterprise	Internal Service	Account Total
Conservation and Resource Management	\$481,348	\$3,604,514	\$-	\$-	\$-	\$4,085,862
Flood Control / Stormwater Management	\$-	\$8,683,208	\$3,419,124	\$-	\$-	\$12,102,332
Other Physical Environment	\$1,807,681	\$5,384	\$548,367	\$-	\$-	\$2,361,432
<b>Transportation</b>	<b>\$270,853</b>	<b>\$10,132,259</b>	<b>\$9,772,328</b>	<b>\$-</b>	<b>\$-</b>	<b>\$20,175,440</b>
Road and Street Facilities	\$270,853	\$10,132,259	\$9,772,328	\$-	\$-	\$20,175,440
<b>Economic Environment</b>	<b>\$2,014,864</b>	<b>\$4,720,456</b>	<b>\$-</b>	<b>\$-</b>	<b>\$-</b>	<b>\$6,735,320</b>
Employment Opportunity and Development	\$64,307	\$-	\$-	\$-	\$-	\$64,307
Industry Development	\$199,500	\$3,502,767	\$-	\$-	\$-	\$3,702,267
Veteran's Services	\$179,741	\$-	\$-	\$-	\$-	\$179,741
Housing and Urban Development	\$-	\$1,217,689	\$-	\$-	\$-	\$1,217,689
Other Economic Environment	\$1,571,316	\$-	\$-	\$-	\$-	\$1,571,316
<b>Human Services</b>	<b>\$7,275,023</b>	<b>\$1,838,962</b>	<b>\$177,255</b>	<b>\$-</b>	<b>\$-</b>	<b>\$9,291,240</b>
Health Services	\$2,100,311	\$1,562,090	\$177,255	\$-	\$-	\$3,839,656
Mental Health Services	\$638,156	\$-	\$-	\$-	\$-	\$638,156
Public Assistance Services	\$2,376,316	\$-	\$-	\$-	\$-	\$2,376,316
Other Human Services	\$2,160,240	\$276,872	\$-	\$-	\$-	\$2,437,112
<b>Culture / Recreation</b>	<b>\$6,318,922</b>	<b>\$4,411,176</b>	<b>\$4,094,828</b>	<b>\$-</b>	<b>\$-</b>	<b>\$14,824,926</b>
Libraries	\$6,145,922	\$568,570	\$3,091,730	\$-	\$-	\$9,806,222
Parks and Recreation	\$500	\$3,842,606	\$1,003,098	\$-	\$-	\$4,846,204
Cultural Services	\$150,000	\$-	\$-	\$-	\$-	\$150,000
Special Events	\$22,500	\$-	\$-	\$-	\$-	\$22,500
<b>Other Uses and Non-Operating</b>	<b>\$23,508,518</b>	<b>\$90,831,583</b>	<b>\$21,700</b>	<b>\$29,632</b>	<b>\$5,494,505</b>	<b>\$119,885,938</b>
Inter-Fund Group Transfers Out	\$23,508,518	\$90,742,192	\$21,700	\$29,632	\$5,494,505	\$119,796,547
Clerk of Court Excess Remittance	\$-	\$89,391	\$-	\$-	\$-	\$89,391
<b>Court-Related Expenditures</b>	<b>\$5,637,235</b>	<b>\$9,002,552</b>	<b>\$245,953</b>	<b>\$-</b>	<b>\$38,387</b>	<b>\$14,924,127</b>

This table hints at what counties are spending millions of dollars on per year that may or may not be actually mandated by the state and federal governments for each county to fund.

<sup>i</sup> On behalf of Florida Association of Counties, the primary research and writing was conducted by Mr. David Heedy, at the time a law clerk for the Florida Association of Counties.

<sup>ii</sup> On behalf of Florida Association of County Attorneys, the primary research and writing was conducted by the Growth Management & Environmental, the General Governmental, and the Public Safety Committees.