



## **MEMORANDUM**

**To: Florida Apartment Association**

**From: Ronald L. Book, Esq.  
Kelly C. Mallette**

**Date: May 19, 2008**

**RE: 2008 Legislative Session – Final Session Report**

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First and foremost, thank you for the continued opportunity to represent the Florida Apartment Association.

As you may know, the Legislature adjourned, Sine Die, Friday, May 2, 2008, concluding a session that will undoubtedly be remembered as the most difficult in recent Florida history. After enjoying many years of growth in the economy, a downturn in the housing market, coupled with declining sales tax revenues caused an enormous shortfall in Florida's budget. When all was said and done, legislators cut more than \$6 billion in programs to balance the budget. Now that the session is over, members will return to their districts to begin the long campaign season.

For the Florida Apartment Association, this session presented many challenges, and our success can be measured not only by what did pass, but also by what did not. We are proud that the Legislature, once again, approved the early lease termination bill, and we look forward to support from the Governor's office.

Finally, we must thank the FAA President, Mark Ogier, FAA President-Elect Brenda Gallagher and the FAA leadership for their tireless efforts throughout the session. The same goes for Harry Heist and Mike Davis whose work on the early lease term bill provided enormous help in getting the job done. Thanks also to Jeff Rogo and Marjorie Cook for all of their support throughout the session. I would urge the Association to be sure to thank our friends in the Legislature, particularly Representative Pat Patterson and Senator Dave Aronberg, the sponsors of the early lease term bill.

### **Apartment Association Priorities**

#### **SB 2716 by Senator Aronberg and HB 1489 by Representative Patterson Relating to Residential Tenancies/Early Lease Termination**

The Legislature approved the early lease termination bill with no "no" votes in either the House or Senate. The bill represents months of effort by the Association and nearly a

year of working closely with the Governor's office to identify and address his concerns. All that is left is approval by the Governor. While we feel very positive about receiving the Governor's support, we have encouraged the FAA membership to write letters urging him to sign the bill, and the FAA has done an excellent job at sending letters to the Governor. We expect the bill to be transmitted to the Governor's office any day now, at which point, he will have 15 days to act on the bill.

**SB 1408 by Senator Rich and HB 931 by Representative Williams**  
**Relating to Residential Tenancies/Domestic Violence**

HB 931 was approved by the House, but did not pass into law since the bill was never considered by the full Senate. The bill was substantially amended in the Senate, removing all references to non-discrimination and early lease termination, but was never heard in the Senate's Judiciary Committee. The Senate sponsor, Senator Nan Rich, worked hard to have the bill withdrawn at the end of session, but we worked closely with the chair of the Senate Judiciary Committee, Senator Alex Villalobos, to keep the bill from being withdrawn. It is safe to assume that the proponents of the legislation will be back with the bill next session. Therefore, we will have to continue to be vigilant in opposing this proposal.

**SB 1530 by Senator Bennett and HB 823 by Representative Kravitz**  
**Relating to Access to Dwelling Units**

By the end of the session, HB 823 was substantially amended so that the only remaining provision was a requirement that landlord's keep logs of all direct employees with access to the unit, and a listing of when such employees access the unit. The bill was approved by the full House, but was never heard in the Senate. The bill was a priority for Representative Kravitz, who is retiring from the House due to term limits.

**SB 2236 by Senator Aronberg and HB 755 by Representative Nelson**  
**Relating to Sexual Offenders and Predators**

We worked closely with the sponsors of HB 755 and SB 2236 to amend this to target only those landlords who "knowingly solicit" sexual predators to lease a dwelling unit due to their status as sexual predators. Once the bill was amended, we removed our objection. Ultimately, the bill was approved by the full House, but did not pass the Senate.

**SB 1790 by Senator Crist and the Committee on Civil and Criminal Justice**  
**Appropriations**  
**Relating to State Judicial System**

This bill was introduced during the Senate's budget process. As you know, it increases various filing fees, but, most importantly, substantially increases the eviction filing fee. We worked with Senator Crist and Representative Kravitz to oppose the fee increase, with the understanding that the issue would be negotiated during the budget conference. Ultimately, the fate of the legislation was decided by House and Senate leadership, who agreed to the fee increase prior to the start of the budget conference. To put it simply, the Legislature balanced the court system budget using this fee increase bill. This bill has not yet been presented to the Governor, but we fully expect him to sign the bill since, without it, it would nearly void the entire civil justice budget.

**SB 1588 by Senator Haridopolos**  
**Relating to Property Taxation**

SB1588 (Haridopolos) addresses the issues identified in the Department of Revenue's report on the implementation of statutory tax reform and implementation of

Amendment 1, which was approved by voters on January 29, 2008. The bill also includes broader language addressing property tax reform, and includes provisions related to the governance of Downtown Development Authorities.

It is important to note that some of the tax reform provisions in the bill were added in the final hours of the session. Since then, we have been working closely with the House and Senate Finance and Tax staff, the Department of Revenue and the Florida League of Cities to provide you with the most current interpretation of the provisions in the bill. We expect the Department of Revenue to work toward a final interpretation of the effects of SB 1588, and we will provide you with an updated analysis as further details become available.

As approved by voters on January 29, 2008, the provisions of Amendment 1 reduced the property tax base. Under current law, local governments are allowed to levy a millage rate in FY 2008-09 to recover the losses from the reduced tax base caused by Amendment 1 by a simple majority vote.

As you know last year's statutory tax reform requires a 2/3 or unanimous vote for a municipality to exceed the rolled back rate, depending upon the amount of the increase. The language in SB 1588 provides that the rolled back rate for FY 2008-09 must be calculated as if the tax base **had not** been reduced by Amendment 1. This will cause the rolled back rate to be reduced. Although the maximum millage rate that may be levied by a 2/3 or unanimous vote of the governing body has not changed, the effect of the new language will be to lower the majority vote "cap" for FY 2008-09. In many cases, this means that it will require a 2/3 vote of the membership of the governing body for a municipality to hold itself harmless from the effects of Amendment 1.

In its original form, SB 1588 was the Amendment 1 implementation glitch bill and does include several issues identified by the Department of Revenue as necessary to implement Amendment 1. The major provisions resulting from the Department's report are as follows.

- In order to more accurately assess the tax rolls, SB 1588 reflects an extensive list of data the Department identified as necessary to improve the ability to forecast revenue or estimate impacts of changes in property tax laws.
- Regarding portability application, this bill clarifies the rules that the Save-Our-Homes differential can be transferred to a new homestead by providing that if a husband and wife both owned and resided on a homestead, each is considered to have received the exemption, even if only one or the other had applied for it. Additionally, it provides that the full differential can be transferred if all who qualify for the homestead exemption in the new homestead also qualified for and received the exemption in the old homestead.
- This bill authorizes a taxpayer, who objects to the assessment placed on his or her property, including homestead property, to appeal the assessment to the value adjustment board.

Finally, the bill makes changes to laws related to Downtown Development Authorities to clarify who is the governing body as it relates to levying millage rates. This provision applies to all DDA's established prior to 1968, and classifies Downtown Development

Authorities (DDA) as dependent districts for purposes of levying millage. Additionally, it clarifies that, for purposes of levying millage and determining maximum millage rates, the vote of the governing body of the municipality is the vote that will determine the millage rate. Therefore, to exceed tax caps currently in statute, depending upon the amount of the millage increase, requires either a 2/3 or unanimous vote of the governing body.

SB1588 is effective upon becoming law, unless otherwise specified within the legislation, pending action by the Governor.

**SB 2860 by Senator Atwater**  
**Relating to Property Insurance**

In the final hours of the session, the Legislature did approve a large property insurance package. Although the bill is lengthy, the most important provision is the additional one-year extension of the rate freeze on Citizen's policies. The additional provisions relating to arbitration and hurricane loss models may have a positive effect on all policies, but we are unsure of the overall impact of the legislation on multifamily properties.

**TAXATION AND BUDGET REFORM COMMISSION**

The Taxation and Budget Reform Commission added a unique dynamic to the politics of the session. Appointed by the Governor and House and Senate leadership, the TBRC meets every 20 years to review Florida's taxation and budget issues. They are an extraordinarily powerful group because they are allowed to place any item on the ballot for consideration by Florida voters. Although they considered numerous proposals over the past year, they agreed on only a few for the November ballot. A summary of the proposals is below.

**CS/CP 0002, Second Engrossed - Eliminating state required school property tax and Replacing with equivalent state revenues to fund education.**

Replacing state required school property taxes with state revenues generating an equivalent hold harmless amount for schools through one or more of the following options: repealing sales tax exemptions not specifically excluded; increasing sales tax rate up to one percentage point; spending reductions; other revenue options created by the legislature. Limiting subject matter of laws granting future exemptions. Lowering property tax millage rate for schools. **This proposed constitutional amendment, known as the "tax swap", also contains a provision favorable to the apartment industry limiting annual increases in assessment of non-homestead real property at 5%.** The Florida Association of Realtors is preparing a campaign to encourage passage of this proposal which will appear on the November ballot as Amendment 5. Opponents of Amendment 5 will argue that it opens the door to a sales tax on services.

**CS/CP 0004, Second Engrossed - Changes and improvements not affecting the assessed value of residential real property.**

Authorizes the Legislature, by general law, to prohibit consideration of changes or improvements to residential real property which increase resistance to wind damage and installation of renewable energy source devices as factors in assessing the property's value for ad valorem taxation purposes. Effective upon adoption, repeals the existing renewable energy source device exemption no longer in effect.

**CS/CP 0006, 0008, and 0034, Second Engrossed - Assessment of working waterfront property based upon current use.** Provides for assessment based upon use of land used predominantly for commercial fishing purposes; land used for vessel launches into waters that are navigable and accessible to the public; marinas and drystacks that are open to the public; and water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities, subject to conditions, limitations, and reasonable definitions specified by general law.

**CS/CP 0015 and 0016, First Engrossed - Property tax exemption of perpetually conserved land; classification and assessment of land used for conservation.** Requires Legislature to provide a property tax exemption for real property encumbered by perpetual conservation easements or other perpetual conservation protections, defined by general law. Requires Legislature to provide for classification and assessment of land used for conservation purposes, and not perpetually encumbered, solely on the basis of character or use. Subjects assessment benefit to conditions, limitations, and reasonable definitions established by general law. Applies to property taxes beginning in 2010.

**CS/CP 0020, First Engrossed - Religious Freedom.** Proposing an amendment to the State Constitution to provide that an individual or entity may not be barred from participating in any public program because of religion and to delete the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

**CS/CP's 0026 and 0040, Second Engrossed - Requiring 65 percent of school funding for classroom instruction; state's duty for children's education.** Requires at least 65 percent of school funding received by school districts be spent on classroom instruction, rather than administration; allows for differences in administrative expenditures by district. Provides the constitutional requirement for the state to provide a "uniform, efficient, safe, secure, and high quality system of free public schools" is a minimum, nonexclusive duty. Reverses legal precedent prohibiting public funding of private school alternatives to public school programs without creating an entitlement.

**CP 0035, Second Engrossed - Local Option Community College Funding.** Proposing an amendment to the State Constitution to require that the Legislature authorize counties to levy a local option sales tax to supplement community college funding; requiring voter approval to levy the tax; providing that approved taxes will sunset after 5 years and may be reauthorized by the voters.

Addendum to "Final Session Report"  
Jeff Rogo, Government Affairs Director

**HB 909 by Representative Nehr  
Ad Valorem Taxation: Clarifies factors that property appraiser must consider in deriving just valuation**

This bill was approved on the final day of the session and provides that the property appraiser must consider the current legally permissible use of a property and any zoning changes, concurrency requirements, or permits when valuing a property. This provision limits the scope of "highest & best use" and should help in maintaining reasonable tax levels for properties in their current use.

The bill also creates a "more level playing field" for any property owner appealing an appraisal. Addressing the appraiser's "presumption of correctness", the legislation affirms – "It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment." Furthermore, the bill changes the makeup of the Value Adjustment Board. Two citizens would be appointed to this appeals board, one being a commercial property owner.