Charlotte County, Florida
2016 Federal Legislative Agenda

Prepared by Van Scoyoc Associates for the

Charlotte County Board of County Commissioners

Commissioner Chris Constance
Commissioner Stephen R. Deutsch
Commissioner Ken Doherty
Commissioner Tricia Duffy
Commissioner Bill Truex

Questions regarding the information in this book may be directed to:

Greg Burns
(202) 737-8162

Emily Lewis
(941) 743-1582

February 2016

Copyright 2016 Van Scoyoc Associates Inc.

Charlotte County, Florida
2016 Federal Legislative Agenda

Water Resources and Environment

National Flood Insurance Program **5**

Support efforts such as H.R. 2918 and 2901 to improve the National Flood Insurance Program for the benefit of all participants. ***Monitor*** FEMA's implementation of the Homeowner Flood Insurance Affordability Act, including further recommendations stemming from the so-called Affordability Study.

RESTORE Act **8**

Monitor federal implementation of the RESTORE Act to ensure continued benefit to Charlotte County. ***Support*** efforts to secure funding for Charlotte County. ***Support*** efforts to allow bonding of future RESTORE receipts so communities may implement complete projects now instead of waiting for years of funding to be available.

Waters of the United States **10**

Monitor activity related to the implementation of the EPA's rule on Waters of the U.S. ***Oppose*** any aspects of the proposed rule that could lead to unrealistic and over-burdensome regulations that would negatively affect Charlotte County.

Federal Flood Risk Management Standard **11**

Monitor the implementation of Executive Order 13690 and the Federal Flood Risk Management Standard for potential impacts to Charlotte County. ***Monitor*** Congressional activity related to the updating of the Federal Flood Risk Management Standard.

Charlotte Harbor Conservation; Central Sewers **13**

Support efforts to secure funding for Charlotte County sewer system expansion. ***Support*** amending existing Charlotte County water infrastructure authorization to allow $16,000,000 for waste water infrastructure to address the County's Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.

Shoreline and Inlet Management **15**

Monitor opportunities for federal involvement in a solution at Stump Pass or on Knight Island and Manasota Key to address sediment management and erosion of beaches, and to provide for safer navigation. ***Monitor*** the Federal Emergency Management Agency's future interpretation of Eligible Sand Replacement on Public Beaches fact sheet.

Energy Exploration **18**

Monitor the potential expansion of energy exploration in Florida.

Transportation

Transportation Authorization **21**

Monitor proposed changes to federal highway and transit programs. ***Monitor*** efforts to enhance federal transportation revenue streams. ***Support*** any and all opportunities to secure funding for Charlotte County priorities via this legislation or other means.

Federal Aviation Administration Authorization **22**
Support the passage of a long-term FAA reauthorization bill, to include the Airport Improvement Program and the Contract Tower Program. ***Support*** $3.35 billion in annual appropriations for the Airport Improvement Program. ***Support*** Charlotte County Airport Authority grant proposals through the FAA Airport Improvement Program. ***Support*** annual full and dedicated funding for the FAA Contract Tower Program.

<u>Economic Development & Social Services</u>

Excise Tax on High-Cost Health Insurance Plans **24**
Support efforts to repeal the excise tax on high-cost health insurance plans (a.k.a. the Cadillac tax) within the Affordable Care Act.

Community Services Block Grants & the Low Income Home Energy Program **26**
Monitor funding levels for the Community Services Block Grant and the Low Income Home Energy Program because of their critical role in the County's efforts to support those that are least fortunate. ***Support*** any applicable funding opportunities for the Human Services Department.

Assessment of Fair Housing Rule **27**
Monitor implementation of the Department of Housing and Urban Development's Assessment of Fair Housing Rule.

Economic Development Administration Programs **29**
Support Charlotte County EDA grant applications as applicable, including potential applications for improvements to Parkside, Charlotte Harbor, and Murdock Village Community Redevelopment Areas or other infrastructure projects. ***Support*** continued adequate funding of the Economic Development Administration.

<u>Local Government Issues</u>

Remote Sales-Tax Legislation **30**
Support legislation that requires companies making catalog and internet sales to collect and remit the associated taxes. ***Support*** federal tax policies that maintain revenue streams to local governments.

Transient Occupancy Taxes **32**
Oppose legislation that would exempt Internet travel brokers from paying taxes on the full room rate paid by the consumer, thereby costing Charlotte County and its political subdivisions the opportunity to collect the appropriate Transient Occupancy Taxes from visitors to the region.

Tax-Exempt Bonds **34**
Oppose legislation that would threaten the tax exemption on state and local bonds, including a 28 percent cap on tax-exempt municipal bonds.

FEDERAL ISSUE: National Flood Insurance Program

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 1968, Congress established the National Flood Insurance Program (NFIP) to address the nation's flood exposure and challenges inherent in financing and managing flood risks in the private sector. Private insurance companies at the time claimed that the flood peril was uninsurable and, therefore, could not be underwritten in the private insurance market. A three-prong floodplain management and insurance program was created to (1) identify areas across the nation most at risk of flooding; (2) minimize the economic impact of flooding events through floodplain management ordinances; and (3) provide flood insurance to individuals and businesses.

Until 2005, the NFIP was self-supporting, as policy premiums and fees covered expenses and claim payments. Today, the program is roughly $23 billion in debt due to a number of large storms, the most recent being Hurricane Sandy.

In mid-2012, Congress passed, and the President signed, the Biggert-Waters Flood Insurance Act (BW12), a 5-year reauthorization of the NFIP that attempted to restore the program to firmer financial footing by making a number of changes to the program that impacts the County's residents. Then, in early 2014, the Homeowner Flood Insurance Affordability Act (HFIAA), was enacted in an attempt to address some of the so-called unintended consequences of BW12.

While HFIAA delayed many of the premium increases implemented by BW12, in the long run, the only real difference between rate increases envisioned by the two bills is that HFIAA reinstated grandfathering. This provision originally ended by BW12 allows property owners to pay flood insurance rates based on original risk, not that which is determined by new community flood maps.

Authorization of the NFIP expires September 30, 2017.

HFIAA Implementation
While it is unclear if Congress can successfully address the shortcomings in HIFIAA during the remainder of the 114th Congress, FEMA will continue to spend significant time implementing the legislation. This includes creating a Flood Insurance Advocate, allowing for option high-deductible policies for residential properties, communicating full flood risk determinations to property owners regardless of whether their premiums reflect such risk, implementing changes to how FEMA handles map revisions, complete a study of community-based flood insurance options, attempt to secure reinsurance of coverage provided by the NFIP from private markets, provide refunds to pre-FIRM primary homeowners who overpaid due to BW12, provide guidelines for property owners describing alternative means of flood mitigation, other than elevation, that can reduce flood risk and inform property owners about how mitigation can lower premiums, complete an Affordability Study and a "Draft Affordability Framework," allow for the monthly payment of flood insurance premiums, and report to Congress on the number of annual policy premiums that exceed one percent of the total coverage provided by the policy.

In late 2014, FEMA announced the opening of the Interim Office of the Flood Insurance Advocate and the appointment of an Interim Flood Insurance Advocate. The Acting Advocate and staff will focus on assisting the public as they navigate through these new NFIP processes by leveraging FEMA resources to address specific public inquiries or concerns. They will also develop a long-term regional mapping

outreach and education strategy. FEMA noted that additional funding would be needed in order to fully install the permanent Office of the Flood Insurance Advocate and expand its role, but until then it would operate the office with existing resources.

Meanwhile, effective April 1, 2016, the first significant wave of NFIP rate increases resulting from HFIAA will be instituted. As noted above, HFIAA called for the NFIP to limit rate increases to no more than 18 percent for any one policy with exceptions. However, FEMA has interpreted HFIAA to allow for the total amount charged to the policyholder to increase an average of 19.8 percent for all 5.5 million FEMA policies and an increase of 37 percent for certain policies.

The most notable exception is that older non-primary residences and older business properties will continue to see annual increases of up to 25 percent. However, because of a new mandatory $250 surcharge on certain properties, some may see a premium increase of 37 percent as of April 1, 2015.

The mandatory $250 surcharge is also applied to those who hold Preferred Risk Policies (PRP) for their non-primary residence or business property. These policies are only available for buildings located in moderate to low-risk areas outside of the Special Flood Hazard Area where there is no mandatory purchase requirement. The policies cost less to reflect the lower risk but are also ineligible for our Community Ratings System (CRS) discount. The addition of the $250 surcharge can add up to 62% to the cost of the policy premium (based on a premium of $405 for a non-primary residence without a basement with $250,000 building and $100,000 contents coverage) which will cause many holders to drop the policy. During Hurricane Sandy, many of the flood losses were to properties outside of the SFHA. Dis-incentivizing the purchase of PRP policies is irresponsible and should be reconsidered.

This new mandatory surcharge and the Federal Policy fee found on every FEMA flood insurance policy are not considered premiums by FEMA, and thus are not subject to the limitations described in the HFIAA. FEMA has admitted that as a result, the increase in the total amount charged to a policy may exceed 18 percent. Although no analysis has been completed, Charlotte County has seen a decrease in the number of flood insurance policies in force in the community – a trend which may partially be a result of higher premiums. This trend is also occurring nationwide.

Affordability Study
In 2015, the National Academy of Sciences released two reports on Affordability of National Flood Insurance Program Premiums. Overall the reports unfortunately left many questions unanswered, indicating that many decisions must be made by policy makers (Congress, in this case) and that the report's specific and clear guidance is limited due to a lack of data.

The reports focus in a highly technical manner on examining options for providing premium assistance to certain NFIP policyholders and suggest tying such assistance to mitigation grants or loans. Specifically, the second report found that "linking mitigation with premium assistance can lead to property owners having a cost effective combination of mitigation and insurance coverage." The reports do not simply suggest ways to arbitrarily lower flood insurance policy costs across the board.

Now that the affordability study is complete, FEMA is expected to propose an affordability framework to Congress within 18 months (by the summer of 2017). Based on these reports, that framework will likely include some form of premium assistance and mitigation efforts.

Interestingly, with regard to grandfathered policies, the study indicates "HFIAA 2014's reinstatement of grandfathering, which will perpetuate cross subsidies in the NFIP, will result in the program increasingly violating actuarial pricing principles if flood risks increase in the future."

Other Flood Insurance Legislation

Two bills have been introduced in the 114th Congress to try to improve upon HFIAA, particularly dealing with rate increases for certain properties. For example, H.R. 2918, the Flood Insurance Fairness Act introduced by Rep. Carlos Curbelo (R-FL) would extend the level of rate increases offered to primary homeowners under HFIAA to all property owners, particularly addressing concerns with second homeowners and business owners who may otherwise face exorbitant flood insurance rate increases. The legislation is cosponsored by seven members of Congress.

Also, Rep. David Jolly (R-FL) introduced H.R. 141 that would further amend BW12 by extending the rate relief provided in HFIAA to businesses and "owner-occupied" second homes. The difference between this bill and the bill offered by Rep. Curbelo is the distinction made between so-called "owner-occupied" second homes. H.R. 141 is cosponsored by six members of Congress.

Meanwhile, Reps. Dennis Ross (R-FL) and Patrick Murphy (D-FL) introduced H.R. 2901, the Flood Insurance Market Parity and Modernization Act. This bill would clarify provisions in BW12 that private flood insurance products would be regulated by individual states instead of the federal government, which is perceived to be better for insurers and is expected to create more opportunity for private insurance to proliferate. The House Financial Services Committee held a hearing on January 8, 2016 to discuss H.R. 2901, which has nineteen cosponsors.

RECOMMENDED POSITION: ***Support*** efforts such as H.R. 2918 and 2901 to improve the National Flood Insurance Program for the benefit of all participants. ***Monitor*** FEMA's implementation of the Homeowner Flood Insurance Affordability Act, including further recommendations stemming from the so-called Affordability Study.

FEDERAL ISSUE: RESTORE Act

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In April 2010, an explosion at the BP-operated Deepwater Horizon oil rig caused the worst oil spill in U.S. history, with almost 5 million barrels of oil spilling into the Gulf of Mexico.

In the summer of 2012, Congress passed the RESTORE Act, which established the Gulf Coast Restoration Trust Fund and mandated that 80 percent of Clean Water Act (CWA) civil damages from the spill be allocated directly to the five impacted states, including Florida. The legislation also contained additional, Florida-specific language as to how the state's allocation should be spent by the Gulf Consortium and the individual counties along the Gulf.

Since the spill, BP settled with the federal government for $4.5 billion to resolve criminal charges against it. This funding is allocated by the National Fish and Wildlife Foundation as well as directed to other trust funds. BP also agreed to provide an interim payment of $1 billion to repair natural resources via the Natural Resource Damage Assessment (NRDA) process. Based on the law, this last payment is tax-deductible for the company.

A civil trial between BP and the Department of Justice (DOJ) began in 2013, and in 2014, a U.S. District Court judge ruled that BP was "grossly negligent" in the Deepwater Horizon spill, citing the company's extreme measures to cut costs despite safety risks. In January 2015, the same judge ruled that BP dumped 3.2 million barrels of oil into the Gulf during the disaster.

Meanwhile, in 2013, DOJ settled with Transocean for their role in the Deepwater Horizon spill. As a result of the agreement, Transocean will pay $1 billion in CWA fines, resulting in the first allocation of funding to be distributed via the RESTORE Act. From this initial settlement, Charlotte County will receive a direct allocation of $737,204.

In July 2015, BP and DOJ reached a settlement for all federal and state claims in which BP will pay $5.5 billion over 15 years in CWA fines. BP will also pay $4.9 billion in economic claims to the Gulf states, including $2 billion to Florida; $7.1 billion (not including the $1 billion already committed by BP) in NRDA claims, including $680 million for Florida and $350 million for region-wide claims; and approximately $600 million to resolve the economic loss claims of local governments.

These CWA fines will flow to the Gulf States via the RESTORE Act. The Department of the Treasury is tasked with implementing the RESTORE legislation. Treasury published a final rule for the RESTORE Act on December 14, 2015, with an effective date of February 12, 2016. From within the Treasury-administered Trust Fund, Charlotte County is receiving $737,204 in Direct Component funding, as well as $12,434,783 from the Spill Impact Component, which was split evenly among the Gulf counties in Florida.

The RESTORE Act also established the Gulf Coast Ecosystem Restoration Council (the Council), which is responsible for administering 60 percent of the total funding allocated to the Trust Fund. Thirty percent of the Trust Fund is to be used by the Council to develop and fund a Comprehensive Plan for the restoration of the entire Gulf Coast ecosystem, and the remaining thirty percent is to be distributed under the Spill Impact Component. The Council includes the Secretaries of the Interior, Commerce,

Agriculture, the Administrator of the Environmental Protection Agency, Secretary of the Army for Civil Works, the head of the Coast Guard, and the Governors of each state. Project and program requests for initial funding from the Transocean settlement under the Council's Comprehensive Plan were due in late 2014.

In August 2015, the Council released their draft Funded Priorities List (FPL). This draft FPL proposed to fund approximately $139.6 million in restoration activities with a focus on 10 watersheds in the Gulf. It also included Category I and Category II projects, with Category I projects to receive funding once the FPL is finalized and Category 2 projects to be considered for funding in the future. The draft FPL, however, did not include any watersheds south of Tampa Bay. The list was open for public comment until September 2015.

Then, in September 2015, the Council released a proposed regulation to implement the Spill Impact Component of the RESTORE Act. It includes a formula based on three criteria to determine how much funding each state will receive. There are some concerns regarding one of the criteria, which is based on population, because it calculates the *average* population for each coastal county bordering the Gulf of Mexico within a state. Therefore, using this calculation, the Council finds that Alabama, which only has 2 coastal counties, has the largest average population, and Florida, which has 20+ coastal counties, comes in second.

Charlotte County's Federal Council Request

The County's Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project (the Project) is a large scale, multi-phased project focused primarily on achieving the water quality restoration goals of the Council's Initial Comprehensive Plan. The Project includes a comprehensive septic-to-sewer system conversion, construction of stormwater improvements, and the implementation of a public education campaign, all aimed at reducing bacteria and nutrients entering the impaired waters of Charlotte Harbor from the urbanized and coastal areas of Charlotte County.

The County advocated for inclusion of the Project as one of the Florida Department of Environmental Protection's (FDEP) five recommendations to the Council. FDEP submitted their recommendations to the Council, but did not select the Project as one of their initial suggestions for funding. Despite this, the RESTORE Act may still provide an opportunity to seek funding for the Project.

RECOMMENDED POSITION: ***Monitor*** federal implementation of the RESTORE Act to ensure continued benefit to Charlotte County. ***Support*** efforts to secure funding for Charlotte County. ***Support*** efforts to allow bonding of future RESTORE receipts so communities may implement complete projects now instead of waiting for years of funding to be available.

FEDERAL ISSUE: Waters of the United States

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: A series of decisions by the U.S. Supreme Court over the past decade imposed restrictions on the scope of wetland regulation governed by Section 404 of the Clean Water Act (CWA), which regulates "dredge and fill" activities in navigable waters and their adjacent wetlands. Opponents of these restrictions have urged Congress to redefine Waters of the U.S. (WOTUS), and apply that definition to all aspects of the CWA.

As legislation along those lines failed to pass previous Congresses, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (ACOE) over the past several years developed guidance first, and now a final rule, to redefine WOTUS. There is concern that this effort significantly expands the definition of WOTUS to include tributaries, ditches, canals, and other water bodies that can potentially drain into navigable waters, interstate waters, or the territorial seas. These water bodies are likely to be subject to new requirements, and some waters currently covered by a permit could be subject to additional monitoring and regulation when those permits are renewed.

Despite a significant amount of opposition to the rule, Congress has thus far been unsuccessful in its attempts to block or alter implementation of it. The House passed H.R. 1732 in May 2015, which would withdraw the rule and call for a new rulemaking process that engages state and local governments. The Senate failed to pass a similar bill, but did pass a resolution of disapproval against the rule. This will be vetoed by the President if it is also passed by the House.

Meanwhile, efforts to include a "policy rider" on the FY 2016 omnibus appropriations bill that would ban the use of federal funds to implement WOTUS during the fiscal year were unsuccessful. Omission of this was part of the tradeoff between supporters of lifting the export ban on crude oil and environmentalists.

Ultimately, the Courts are likely to decide the fate of WOTUS. In August of 2015, a federal judge in North Dakota found that 13 states suing to block implementation of the rule met the conditions for a preliminary injunction, halting implementation of the rule in those states. Florida was not one of them. Then, in October of 2015, the Sixth Circuit Court in Cincinnati issued a nationwide stay on WOTUS to allow for a more deliberative determination of whether the rule is "proper under the dictates of law." This means all implementation of the rule is currently halted. It may take years for this to be fully resolved.

RECOMMENDED POSITION: ***Monitor*** activity related to the implementation of the EPA's rule on Waters of the U.S. ***Oppose*** any aspects of the proposed rule that could lead to unrealistic and over-burdensome regulations that would negatively affect Charlotte County.

FEDERAL ISSUE: Federal Flood Risk Management Standard

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In January 2015, the Administration issued Executive Order (EO) 13690 to update the Federal Flood Risk Management Standard (FFRMS), which helps define rules and regulations for federal activities in a floodplain. This new FFRMS will require federal agencies to update their flood-risk reduction strategies for certain federal actions that occur in the floodplain. Shortly after issuing the Executive Order (EO) and the new standard, the Federal Emergency Management Agency (FEMA) released proposed guidelines for individual federal agencies to follow when implementing the EO and standard. The County submitted comments on the proposed guidelines in May 2015.

This new EO and the accompanying FFRMS redefine the floodplain and provide new direction for federal agencies to avoid or manage actions in the floodplain. Consistent with the President's Climate Action Plan, the new EO and FFRMS seek to improve the nation's preparedness and resilience against flooding.

Federal regulations define the floodplain as the area subject to a one percent or greater chance of flooding in any given year – the 100-year floodplain. FEMA identifies the floodplain on community maps where federal flood insurance is required and building restrictions are imposed to minimize flood losses. All levels of government rely on the maps to inform decisions about emergency response, land use, and construction in the floodplain.

There were several concerns with the draft Implementing Guidelines (IG), mostly related to a lack of clarity and apprehension that the FFRMS could have had much more significant impacts to local governments than FEMA envisioned. When the final IG was released in October 2015, however, the scope had been scaled down.

Most importantly, the final IG clearly differentiates between "actions" and "federally funded projects," the latter of which will only be subject to the new FFRMS. Federally funded projects are defined as "actions where federal funds are used for new construction, substantial improvement, or to address substantial damage to structures and facilities." One of the most significant concerns with the FFRMS as originally drafted was that it would apply to all federal actions. Federal actions in the 100-year floodplain will continue to face floodplain reviews as they have in the past, but will not be subject to new FFRMS standards.

In addition, the new IG clearly indicates that the FFRMS "is a resilience standard," not an "elevation standard," the latter of which initially triggered concerns related to floodplain regulations, the National Flood Insurance Program, and residual risk issues. However, the new IG still defines the "FFRMS floodplain" as a typically larger area than the 100-year floodplain that will be measured in one of three ways and be used when federal investments are made. Those three measurements are:

1) Climate-informed Science Approach;
2) Freeboard Value Approach, which adds two or three vertical feet (depending on the level of criticality of the federal investment) to the base flood elevation and developing a corresponding horizontal expansion of the floodplain; or
3) 500-year flood elevation.

Some concerns related to the new FFRMS remain, however. For instance, the degree of federal investment is not addressed in the final IG, and it is unclear whether a de minimis federal investment in a project could trigger the new FFRMS. Ideally, FEMA would have placed limits on the amount of investment needed to trigger review under the FFRMS. It makes sense to ensure that wholly federally-funded projects, particularly after a major disaster, are constructed to levels of higher resilience. However, that's not exactly what the updated IG does. The new IG also does not address grandfathering, so its impact on ongoing projects remains unknown.

Finally, concerns remain that each federal agency (potentially as many as 55) is now tasked with updating their own procedures to implement the new FFRMS. There is no direction as to how, or when, they should update their regulations and procedures, nor is there any central clearinghouse or other information source on the status of each agency's effort.

Meanwhile, Congress remains wary of the new FFRMS. Both the House and Senate included language in their respective Fiscal Year 2016 appropriations bills to halt implementation of it, but the final language included in the FY 2016 omnibus was significantly weakened. Rather than banning the use of FY 2016 funds for implementation of the new FFRMS, the omnibus included a provision that clarified what programs will be affected by it, specifically as it relates to the Army Corps' section 404 and 10 permits, as well as the National Flood Insurance Program.

<u>RECOMMENDED POSITION</u>: ***Monitor*** the implementation of Executive Order 13690 and the Federal Flood Risk Management Standard for potential impacts to Charlotte County. ***Monitor*** Congressional activity related to the updating of the Federal Flood Risk Management Standard.

FEDERAL ISSUE: Charlotte Harbor Conservation; Central Sewers

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The health of Charlotte Harbor is critical to the future of Charlotte County. A significant issue that threatens the Harbor is the need to transition residents from older, often failing septic systems to central sewers.

The Environmental Protection Agency estimates that over the next 20 years, the nation must collectively invest $390 billion to update or replace existing wastewater systems and build new ones to meet increasing demand. This is an issue that affects the whole country, but in Charlotte County, fewer than 60,000 residents are on central sewer.

Many of the County's homes are within 150 feet of waterways that flow into Charlotte Harbor, necessitating that residents will ultimately need to be on central sewer. The County is currently completing the first phase of converting homes within close proximity to the Harbor to central sewer and will begin moving toward the second phase of the initiative this year. In addition to taking advantage of State Revolving Funds and tax assessments, the County is pursuing funding for additional phases of this environmentally significant project.

The RESTORE Act offers the County an opportunity to develop central sewers. In late 2012, the County presented a proposal to the Charlotte Harbor National Estuary Program for a more than $16 million project to remove septic systems, install a central sewer system, construct stormwater improvements, and implement an educational program on Best Management Practices on 10,400 total properties, 6,800 of which are existing homes.

Meanwhile, a new process codified by the Water Resources Reform and Development Act (WRRDA) of 2014 presents an avenue from which to seek assistance from the Army Corps of Engineers for water quality restoration activities. Under WRRDA, the Corps is required to seek proposals for water resources studies and project modifications on an annual basis. From the proposals submitted by local sponsors, the Corps identifies those that meet certain criteria and recommends them to Congress for authorization within an Annual Report. The Report will also include an Appendix listing those proposals that are not recommended for authorization and the reasons for the lack of recommendation. Congress then has the opportunity to authorize the recommended studies and project modifications through a yes or no vote.

In 2014, the County submitted to the Corps a project modification proposal for water supply infrastructure. The County requested that its existing water supply authorization be modified to allow $16,000,000 for waste water infrastructure to address the County's Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project. However, the Administration deemed that the County's project did not meet a "core" mission of the Corps of Engineers. Congress, however, in Section 7001 of WRRDA 2014, said "the Secretary shall include…only those…proposed modifications…that are *related to the missions and authorities* of the Corps of Engineers" (emphasis added). Ecosystem restoration, as proposed under the project modification, is related to the missions and authorities of the Corps. Therefore, the County resubmitted the proposal in 2015 and will continue to engage with Congress to support the authorization amendment.

By providing a long term solution to significantly reduce non-point source pollutants into the receiving waters of Charlotte Harbor, the ability to support economic activities dependent on water quality will

improve with the reduction/elimination of beach closures, sanitary health hazard complaints, and related impacts of nutrient and sediment loading. Removal of septic systems will increase the amount of developable land for businesses and provide for a larger variety of uses. Improving water quality will retain and increase tourism. Lastly, a continuation of the cooperative effort between public, private, and nonprofit organizations will continue the enforcement of water quality regulations and Best Management Practices.

RECOMMENDED POSITION: ***Support*** efforts to secure funding for Charlotte County sewer system expansion. ***Support*** amending existing Charlotte County water infrastructure authorization to allow $16,000,000 for waste water infrastructure to address the County's Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.

FEDERAL ISSUE: Shoreline and Inlet Management

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Knight Island and Stump Pass
Knight/Don Pedro Island in Charlotte County is a popular tourist destination and residential area that lies to the south of the Stump Pass inlet. Independent engineering analyses have demonstrated that the inlet causes severe erosion to these downdrift beaches, yet it still serves as a vital navigation inlet for recreational and other boating.

To address the inlet impact and to maintain its navigational use, Charlotte County implemented a management plan and beach restoration project in 2003 by dredging Stump Pass' navigation channel and ebb shoal and transferring that sand to the downdrift beaches. Directly bypassing the trapped sand offsets erosion losses and protects upland development on the islands while also providing for safer navigation. In 2006 and 2011, the County conducted storm damage recovery and maintenance projects to address severe erosion and navigational concerns experienced in the wake of the 2004 and 2008 hurricane seasons. Unfortunately, these efforts are not long-term solutions for Stump Pass.

Congress provides the U.S. Army Corps of Engineers with standing authorization, known as the Continuing Authorities Programs (CAP), to respond to a variety of water resource problems without the need to seek specific congressional authorization or funding for each project. Related specifically to Stump Pass, two authorities are likely most relevant. They include CAP Sections 103 (Small Beach Erosion Control Projects) and 107 (Small Navigation Projects).

In 2012, the County engaged the Corps to explore opportunities to work with the Corps on solutions to Stump Pass erosion and shoaling concerns. A Corps team from the Jacksonville District visited the County to meet with staff, gather information, and tour Stump Pass and the downdrift beaches. While the Corps determined that there was little opportunity to get involved given the limitations of their authorities, there may be other federal opportunities in the future.

Meanwhile, Charlotte County and the Florida Department of Environmental Protection (FDEP) have jointly worked together to take a holistic approach to dredging Stump Pass and renourishing critically eroded beaches at Chadwick Park, the County's public beach park, thence southerly along Palm/Knight/Bocilla/Don Pedro Islands Gulf frontage to Don Pedro State Park. Included within this project is a proposed beach stabilization structure to be place on Manasota Key north of Stump Pass. The main purpose of this structure is to reduce the rate of sand migrating into the Pass, thereby reducing the frequency of dredging cycles. This overall effort, known as the 10 Year Management Plan, was approved by FDEP for permitting in September 2015.

This project provides for continued monitoring, as required by permitting, to dredge Stump Pass in order to re-establish the 1980 channel alignment and provide for re-nourishment of critically eroded beaches. Maintenance dredging of Stump Pass and beach re-nourishment will be conducted approximately every three years. An engineered structure will be installed at Stump Pass to improve program performance. In the permitting process, an Adaptive Management Plan Strategy will be employed to provide options for

modifications to structure(s) placed with initial construction or installation of additional structures in the future in response to beach and inlet management activities and storm erosion impacts.

Knight Island FEMA Reimbursement

Knight Island experienced erosion to various areas of the improved beach during Tropical Storm Debby, which passed by the Gulf Coast of Florida in 2012. Shortly thereafter, the Federal Emergency Management Agency (FEMA) declared a major disaster due to the storm and deemed Charlotte County eligible for Public Assistance. Since then, FEMA determined that the County has not sustained any sand loss volume within the engineered beaches design profiles via Project Worksheet (PW) 1067, Category G, DR-4068.

PW 1067 states:

> *"The FEMA Beach Specialist, when considering only the applicant's engineered beach segments described above and using CEC's volume calculations, computed an eligible net accretion of 36,550 CY."*

With regard to "eligible beach erosion," FEMA Fact Sheet 9580.8: Eligible Sand Replacement on Public Beaches states:

> "*Occasionally a storm causes such dramatic changes in the tides, currents, and wave actions that affect a beach, that sand moved outside of the beach profile. It is moved too far on-shore, off-shore, or along shore such that it is not recoverable by the natural process. In this case, the beach is considered damaged by the storm.*"

The entire portion of the Knight Island improved/engineered beach extends over 25,000 LF or approximately 5 miles. Debby caused significant erosion to portions of the engineered beach and accretion in other areas. Areas that experienced accretion were not nourished in the recent 2011 project. Rather, they have been stable to naturally accreting areas as documented by the project's annual monitoring.

The FEMA Fact Sheet also states:

> *"When conducting evaluations of sand losses due to storm-induced erosion, the entire beach profile must be considered. The beach profile includes a dune or elevated back beach, a backshore consisting of a relatively flat berm(s) above high tide or high water and a sloped foreshore that is subject to variations in water levels, and a sub-aqueous nearshore zone that is influenced by the tides, currents, and wave action. The beach profile is very dynamic, constantly changing with changes in the tides, currents, and wave action that affect it. Sand moves from the dune and/or berm to the foreshore and sub-aqueous nearshore zone, and back again. This movement or redistribution of sand within the beach profile is a natural process that does not constitute beach damage."*

FEMA representatives have cited this portion of FEMA policy as the reason for netting accretion and erosion quantities. This, however, does not apply to our project. The "beach profile" above describes the portion of sub-aqueous and above water sand that is perpendicular to the water line. Sand often moves above and below the water line in a perpendicular path, which allows for natural recovery of the above-water sand. The County is not requesting reimbursement for any sand that was shifted within a "beach profile." In this case, it appears that "beach profile" is being defined as the entire horizontal limits of the engineered beach.

Some areas of the Knight Island beach were significantly eroded by sand shifting outside of the beach profile and moved along or offshore. Nowhere in FEMA policy does it recommend or allow for netting accretion that occurred "along shore." Sand that eroded and moved between 1,000 ft. – 25,000 ft. along shore is not recoverable by any natural process and, therefore, we believe should be an eligible cost.

Since this determination, the County has formally appealed FEMA's negative finding, submitted supplemental information, attended a meeting in Washington with the Chief of the Regulations and Policy office in the Public Assistance Division, and sought the active engagement of Rep. Rooney to help fight this misinterpretation of long-standing FEMA policy. According to FEMA, there is still no definitive timeline for adjudication of the appeal.

RECOMMENDED POSITION: ***Monitor*** opportunities for federal involvement in a solution at Stump Pass or on Knight Island and Manasota Key to address sediment management and erosion of beaches, and to provide for safer navigation. ***Monitor*** the Federal Emergency Management Agency's future interpretation of Eligible Sand Replacement on Public Beaches fact sheet.

FEDERAL ISSUE: Energy Exploration

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Offshore Energy Development
Active energy drilling currently occurs in both the western and central Gulf of Mexico, while nearly the entire eastern Gulf is protected from drilling until 2022 by the Gulf of Mexico Energy Security Act of 2006 (GOMESA). State waters in the Gulf of Mexico extend 10.5 miles from shore. The federal government controls waters beyond that point.

For many years, the federal government has developed five-year Outer Continental Shelf (OCS) Oil and Gas Leasing programs to guide energy exploration activities in federal waters. The most recent plan, developed for 2012-2017, did not propose to lease any areas in the Atlantic OCS for oil and gas drilling. However, the Administration's plan did indicate that it would allow seismic analyses to determine energy resource potential in areas of the Atlantic OCS from Delaware to parts of Florida (approximately north of Brevard County).

In 2014, the Department of Interior's (DOI) Bureau of Ocean Energy Management (BOEM) finalized a Programmatic Environmental Impact Statement (PEIS) on seismic air-gun testing for offshore oil and gas exploration in the Atlantic Ocean, which opens the door for the first new oil and gas surveys in three decades. Specifically, the plan allows for the deployment of high-volume air-guns in federal waters to pinpoint the depth and size of oil and gas deposits. While it is viewed by many to include stringent regulations to mitigate against the effects these air guns may have on wildlife, some argue that the testing will still have devastating impacts on the affected areas.

The PEIS was accepted in July of 2014 and seismic testing is expected to begin this year. Should the analysis of the seismic surveys be completed in time for potential inclusion in the next DOI OCS Oil and Gas Leasing Program for 2017-2022, some believe that drilling could take place in areas identified as having resource potential as early as 2020. Senator Nelson and 10 other members of the Florida delegation sent a letter to President Obama expressing their disapproval of the decision, citing the effects seismic testing could have on Florida's wildlife and fisheries. BOEM is currently preparing a new OCS Oil and Gas Leasing Program for 2017-2022; and, in January of 2015, released its Draft Proposed Program. The draft recommends opening up part of the Atlantic OCS for one lease sale to perform drilling off the coast between Virginia and Georgia in 2021.

Meanwhile, the eastern Gulf of Mexico is protected from drilling until 2022 by GOMESA, but the law does not prohibit seismic testing from being included in the next five-year OCS Oil and Gas Leasing Program, nor prohibit any future Administration from allowing such testing. In addition, Senator Bill Cassidy (R-LA) introduced S. 1276, the Offshore Energy and Jobs Act, with his colleagues Sens. Vitter (R-LA), Wicker (R-MS), Cornyn (R-TX), and Cochran (R-MS). Among other things, the bill would alter the section of GOMESA that blocks oil and gas drilling at least 125 miles from the west coast of Florida until 2022. Instead, Sen. Cassidy's legislation would allow drilling 50 miles off the west coast of Florida. In response, Bill Nelson in the Senate and David Jolly in the House of Representatives, along with Sen. Markey (D-MA) and Reps. Buchanan, Clawson, Graham, and Murphy (all Florida), introduced legislation to extend the existing ban on drilling from 2022 to 2027 (S. 1430 and H.R. 2630, respectively).

Meanwhile, the Senate Energy and Natural Resources Committee approved a bill titled the Offshore Production and Energizing National Security (OPENS) Act, which is similar to the Cassidy bill in that it would allow new energy production on the OCS in the eastern Gulf of Mexico, the South Atlantic, and in the waters off of Alaska. The OPENS Act would also expand offshore revenue sharing to Florida in 2017 for leases in the eastern Gulf of Mexico. Currently, only Texas, Louisiana, Mississippi, and Alabama receive revenue from offshore drilling activities in the Gulf of Mexico. The bill would also direct the Interior Department to hold lease sales in the eastern Gulf in 2018, 2019, 2020, and after 2022.

Unfortunately, momentum for expanded offshore energy development continues in both Congress and the Administration. The OPENS Act, and other similar pieces of legislation, will face a considerable uphill climb in Congress, but as the Administration becomes increasingly amenable to offshore energy exploration and harvesting, we could see additional areas opened for leasing.

Onshore Energy Development (Hydraulic Fracturing)
The rapid expansion of oil and gas extraction using hydraulic fracturing — both in rural and more densely populated areas — has raised concerns about its potential environmental and health impacts. These concerns have focused primarily on potential impacts to groundwater and surface water quality, public and private water supplies, and air quality.

Recently, the Burnett Oil Company submitted a proposal to the National Park Service (NPS) to conduct a seismic survey of 110 square miles within Big Cypress Preserve. The NPS completed an Environmental Assessment (EA) for the proposal and took public comments on the EA until January 4.

States broadly regulate oil and gas exploration and production on non-federal lands. In Florida, oil and gas extraction activities are managed by the Department of Environmental Protection. State laws and regulations governing unconventional oil and natural gas development have evolved in response to changes in production practices, largely due to the use of high-volume hydraulic fracturing in combination with directional drilling. However, state regulations vary considerably, leading to calls for more federal regulation of unconventional oil and natural gas extraction activities.

In March of 2015, DOI finalized regulations for hydraulic fracturing on public lands, which will allow government workers to inspect and validate the safety and integrity of barriers lining the fracking wells, require companies to publically disclose the chemicals used in fracturing, and set safety standards for how companies can store and dispose of used fracking chemicals. The rule only applies to federal lands, and states still retain control of hydraulic fracturing on state and private lands.

In response to the rule, proponents of hydraulic fracturing introduced legislation to weaken the rule. Sen. James Inhofe (R-OK) introduced the Fracturing Regulations are Effective in State Hands Act (S. 828), which would give states sole authority over hydraulic fracturing on any land within their boundary and require that hydraulic fracturing on federal land comply with the laws and regulations of the state in which the land is located. The bill currently has 28 cosponsors.

Meanwhile, supporters of increasing federal regulations for hydraulic fracturing have also introduced legislation. Rep. Matt Cartwright (D-PA) introduced the Closing Loopholes and Ending Arbitrary and Needles Evasion of Regulations (CLEANER) Act of 2015, which would close a loophole that allows oil and gas producing companies to avoid hazardous waste disposal requirements. The bill has 100 cosponsors.

In addition, Rep. Diana DeGette (D-NY) introduced the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act in the House (H.R. 1482) and Sen. Bob Casey (D-PA) introduced a Senate version of the bill (S. 785) in March of 2015. Those bills would define hydraulic fracturing as a federally regulated activity under the Safe Drinking Water Act, which would subject fracking activity to underground drinking water protections and require industry to disclose the chemicals used in hydraulic fracturing. The bills have 62 and 11 cosponsors, respectively.

RECOMMENDED POSITION: ***Monitor*** the potential expansion of energy exploration in Florida.

FEDERAL ISSUE: Transportation Authorization

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: After the passage of several short-term authorizations following the expiration of MAP-21 in 2014, Congress finally passed, and the President signed, a five-year surface transportation authorization called the Fixing America's Surface Transportation (FAST) Act. The FAST Act generally maintains many of MAP-21's reforms, but makes a few changes to existing surface transportation programs, as well as slightly increases funding for those programs.

One of the most significant changes within the FAST Act is the conversion of the Surface Transportation Program from its current form to a new Surface Transportation Block Grant Program, which will allow states greater flexibility in utilizing the funds. In addition, the bill increases the amount suballocated to localities and MPOs by population by one percent annually, increasing from the current 50 percent to 55 percent by 2020. This means Charlotte County can expect to see an increase in formula highway funding beginning in FY 2016. In addition, the FAST Act includes a roughly 10 percent increase in formula transit funding. Most notable, the bill resurrects the competitive grant program under the Bus and Bus Facilities Program, as well as maintains the current formula program. The new competitive portion also includes a set-aside for low or no emissions bus and bus facilities.

Lastly, the FAST Act includes a new competitive grant program called the Nationally Significant Freight and Highway Project Program, which will focus on large-scale highway projects with regional and national importance. The goals of the program are to reduce congestion, generate national and regional economic benefits, and facilitate the movement of freight. This program could provide the County with an opportunity to secure funding for surface transportation priorities such as Piper Road and Burnt Store Road.

In developing the FAST Act, however, Congress did not address the need for a long-term, sustainable plan to finance our nation's transportation infrastructure. Fuel taxes, which provide most of the money for surface transportation, do not provide a solid long-term foundation for generally desired transportation funding growth, even if Congress were to raise them modestly. Instead, the FAST Act relies on various budget gimmicks to fund surface transportation programs over the next five years, such as surplus money from the Federal Reserve, reducing the amount of interest the Fed pays to banks, and selling off part of the Strategic Petroleum Reserve.

Without the creation of a long-term, sustainable funding source, the Highway Trust Fund's deficit will continue to grow over the next five years, making future authorizations increasingly difficult. The choice then becomes finding new sources of income for an expanded program, or alternately, to settle for a smaller program that might look very different than the one currently in place. Less federal funding via a future transportation reauthorization bill would mean significantly less funding available to FDOT, and ultimately Charlotte County, to support both surface transportation and transit projects and programs.

RECOMMENDED POSITION: ***Monitor*** proposed changes to federal highway and transit programs. ***Monitor*** efforts to enhance federal transportation revenue streams. ***Support*** any and all opportunities to secure funding for Charlotte County priorities via this legislation or other means.

FEDERAL ISSUE: Federal Aviation Administration Authorization

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Congress passed an authorization of the Federal Aviation Administration (FAA) in February 2012, which extended the program through the end of Fiscal Year (FY) 2015. Congress then passed a short-term extension through March 31, 2016. Congress will now need to pass a new or extended FAA authorization prior to that date. A new FAA measure may include reforms such as updated software systems and a discussion of increases in taxes and fees.

Airport Improvement Program
Among other things, the FY 2012 legislation authorizes $3.35 billion annually for the Airport Improvement Program (AIP). AIP is a federal grant program that provides funds to public airports to improve safety and efficiency. The program is funded through taxes on airplane tickets and aviation fuel. With the record growth in passenger traffic at the Punta Gorda Airport, including an 88 percent increase from 2013 to 2014 and an additional 20 percent increase to 2015, it is critical to ensure that the airport can compete for sufficient federal funding as necessary to continue this trend.

In its FY 2016 budget, the Administration proposed a reduction in funding for AIP from $3.35 billion in FY 2015 to $2.9 billion by eliminating guaranteed funding for large and medium hub airports. The purpose of the proposal was to focus federal grant support on smaller commercial and general aviation airports that are less likely to have access to additional revenue or other outside sources of capital. Punta Gorda Airport is a non-hub airport.

At the same time, the budget would allow larger airports to increase non-federal passenger facility charges (PFC), thereby giving larger airports greater flexibility to generate their own revenue. However, in the final FY 2016 omnibus appropriations bill, this was rejected by Congress, and the program received its fully authorized limit at $3.35 billion.

Authorized by Congress in 1992, the PFC allows commercial airports controlled by public agencies to charge $3.00 per passenger through airline tickets. The PFC cap was raised in 2001 to $4.50, yet has not been increased since. Several airport groups, including the American Association of Airport Executives, advocate for local authority to raise the cap to $8.50 per enplanement in order to meet current needs and prepare for future demand.

Contract Tower Program
Meanwhile, in response to cuts mandated by the budget sequestration, the FAA announced in 2013 that it would phase out federal funding for 149 contract air control towers around the country, including the tower at Punta Gorda Airport. This proposal was met with substantial Congressional and local opposition, and ultimately legislation was passed that provided the Department of Transportation flexibility to keep these towers funded through the remainder of FY 2013. It is important to note, however, that the funding that was provided to keep these towers open was taken from the AIP, which ultimately resulted in reduced availability of funds for the AIP program that year.

In the FY 2015 omnibus appropriations bill, Congress provided $144.5 million for the FAA Contract Tower Program and added language that guarantees full funding for the entire fiscal year in order to prevent the Administration from making cuts to the program. While the Administration's FY 2016

budget once again recommended no dedicated funding for the Contract Tower program, Congress again ignored this request and provided $154.4 million for the program in the FY 2016 omnibus appropriations bill.

It is important to note that both AIP and the Contract Tower Program are authorized within the FAA bill and, therefore, those programs will lose their authorization on March 31, 2016 despite the funding levels provided in the FY 2016 omnibus. It is expected that both programs will be reauthorized in either another short-term FAA bill and/or a larger reauthorization effort, however.

RECOMMENDED POSITION: ***Support*** the passage of a long-term FAA reauthorization bill, to include the Airport Improvement Program and the Contract Tower Program. ***Support*** $3.35 billion in annual appropriations for the Airport Improvement Program. ***Support*** Charlotte County Airport Authority grant proposals through the FAA Airport Improvement Program. ***Support*** annual full and dedicated funding for the FAA Contract Tower Program.

FEDERAL ISSUE: Excise Tax on High-Cost Health Insurance Plans

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Patient Protection and Affordable Care Act (PPACA), often referred to simply as the Affordable Care Act (ACA) or "Obamacare," was passed by Congress and signed into law in 2010. The primary goal of the ACA was to increase the quality and affordability of health insurance, as well as lower the uninsured rate by expanding public and private insurance coverage. The law includes a number of mechanisms, including individual and employer mandates, insurance exchanges, minimum standards of care, and new taxes/fees to accomplish these goals and reduce the cost of health care.

One such mechanism is the excise tax on high-cost health insurance plans, often referred to as the "Cadillac tax." Under the ACA, a Cadillac health plan is defined as a plan with annual premiums exceeding $10,200 for individuals or $27,500 for families. Beginning in 2018, a 40 percent excise tax will be assessed on any dollar amount paid in premiums exceeding the aforementioned values, which, after 2018, will adjust to inflation annually. For example, a $12,000 individual plan in 2018 would pay an excise tax of $720 per covered employee (12,000 - 10,200 = 1,800 x 40% = 720). However, the rate of growth in healthcare costs often outpaces the rate of inflation, meaning employers are likely to pay significantly more each year. The tax, which is estimated to generate $80 billion over the next ten years, is an offset to pay for the ACA.

Cadillac plans were targeted for taxation due to the idea that these benefit-rich plans (i.e. low, if any, deductible, little cost-sharing by patients, wider provider networks, greater available health services, etc.) often insulate workers from the high cost of their health care, thereby encouraging the overuse of care. Excessive, and sometimes unnecessary, tests and hospital visits have been shown to raise the cost of U.S. health care overall. Therefore, the tax was designed to discourage employers from choosing these types of plans.

The Cadillac tax, however, is hitting public sector employers and workers the hardest, including Charlotte County. Charlotte County, and many other public employers, must now choose whether to cut employees' health plans so they fall below the Cadillac threshold, pass the tax onto the workers, or pay the tax themselves and make difficult budget cuts elsewhere. Many large employers, both public and private, have already begun laying the groundwork to avoid the 40 percent surcharge by passing more costs down to employees. Originally envisioned as a tool to reduce healthcare costs, the tax in practice looks increasingly like an increase in out-of-pocket costs for workers.

The excise tax was originally slated to begin in 2013. However, due to strong concerns expressed by labor groups and others, the ACA was amended by Congress to delay the tax until 2018. Most recently, a provision was included in the FY 2016 omnibus appropriations bill that will delay the Cadillac tax for two additional years, meaning implementation is now set to occur in 2020. The delay is expected to cost $35 million over two years.

The omnibus also requires the Comptroller General to complete a study within 18 months on making age and gender adjustments to the Cadillac tax. This is one of the largest complaints about the tax, in that the caps are hard limits and do not take issues such as age, gender, or location into account. Location was notably omitted from the omnibus, but this provision implies that changes could be made in the future to the tax.

Despite this, there are still calls for completely repealing the tax. Thus far in the 114th Congress, Reps. Joe Courtney (D-CT) and Frank Guinta (R-NH) have both introduced legislation to repeal the Cadillac Tax - H.R. 2050, the Middle Class Health Benefits Tax Repeal Act and H.R. 879, the Ax the Tax on Middle Class Americans' Health Plans Act, respectively. H.R. 2050 has 122 bipartisan cosponsors and H.R. 879 has 71 Republican cosponsors. In addition, a group of pharmaceutical companies, insurance plans, and unions – an unlikely partnering on most other issues - registered in early 2015 to lobby as a coalition to fight the Cadillac tax.

Given the strong, bipartisan opposition to the Cadillac tax, it is likely that the tax will again be addressed sometime before 2020, through either a full repeal or significant changes to the way it is currently structured.

RECOMMENDED POSITION: ***Support*** efforts to repeal the excise tax on high-cost health insurance plans (a.k.a. the Cadillac tax) within the Affordable Care Act.

FEDERAL ISSUE: Community Services Block Grants & the Low Income Home Energy Program

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Community Services Block Grant (CSBG) program allocates federal funding to alleviate the causes and conditions of poverty in communities. The funds provide for a range of services and activities to assist the needs of low-income individuals, including those addressing employment, education, better use of available income, housing, nutrition, emergency services and/or health.

In Charlotte County, the Human Services Department administers CSBG funding, which is the most flexible funding source the County has for addressing self-sufficiency initiatives. The program has income requirements, yet is not an entitlement program, thereby allowing the County to work with clients that are highly motivated to reduce their dependence on public benefits.

The CSBG program has seen level funding over the past few years, receiving $674 million in both FY 2014 and FY 2015. For FY 2016, the Administration requested level funding, which was again granted by Congress in the final FY 2016 omnibus appropriations bill.

Meanwhile, the Low Income Home Energy Program (LIHEAP) provides heating assistance to low-income households. Also administered in Charlotte County by the Human Services Department, LIHEAP is the only lifeline for some of the most impoverished families and seniors in the community. While LIHEAP is often thought of as a program that benefits northern states, it is equally important in Florida due to the expense of cooling a residence during excessive heat in the summer months.

The LIHEAP program has seen reduced funding over the past few years. In FY 2015, the Administration's budget request proposed cutting the program from $3.4 billion in FY 2014 down to $2.8 billion, a greater than 45 percent reduction from FY 2010 when LIHEAP was funded at $5.1 billion. Congress, however, ultimately provided $3.39 billion to LIHEAP in the FY 2015 omnibus. In FY 2016, the Administration requested level funding of $3.39 billion for LIHEAP, with Congress honoring that request in the FY 2016 omnibus.

RECOMMENDED POSITION: ***Monitor*** funding levels for the Community Services Block Grant and the Low Income Home Energy Program because of their critical role in the County's efforts to support those that are least fortunate. ***Support*** any applicable funding opportunities for the Human Services Department.

FEDERAL ISSUE: Assessment of Fair Housing Rule

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2010, the Government Accountability Office released a finding that the Department of Housing and Urban Development (HUD) had failed to implement federal funding according to the Fair Housing Act (FHA). As a result, HUD began a five year effort to rewrite FHA regulations governing the mandate of state and local jurisdictions to affirmatively further fair housing.

In 2013, HUD released a proposed rule that was intended to provide clarity to entities regarding their obligations under the FHA, as well as outline a new fair housing assessment process called the Assessment of Fair Housing (AFH), which would replace the current assessment tool, known as Analysis of Impediments. Several national organizations, including the National Association of Counties and the National Association of Local Housing Finance Agencies, submitted comments to HUD expressing their concerns with the proposed rule. Concerns centered around a belief that the proposed rule was attempting to impose additional requirements on grantees that are not required under the FHA and that the proposed rule would make it easier for local governments and housing authorities to be subject to third-party lawsuits.

In September of 2015, HUD released the final rule, which, according to HUD, will be implemented in two phases. The first phase will be for entities who receive at least $500,000 in CDBG funding and will occur over the next five years. Entities who receive less than $500,000 in CDBG funding will not be subject to the new rules for the first five years, but will be after that time when phase two begins. The new assessment tool (AFH) will be more comprehensive than the previous tool (AI), and will encourage a more regional approach. Specifically, the AFH process is as follows:

> *Part One:* HUD provides program participants with data and an AFH assessment tool to use in assessing fair housing issues in the community. In addition, HUD will provide technical assistance to aid program participants in submitting its AFH.
>
> *Part Two:* Using the HUD data, local data and knowledge, the required community participation process, and the assessment tool, each program participant prepares and submits a complete AFH to HUD, including fair housing goals.
>
> *Part Three:* HUD reviews each AFH within 60 days after receipt to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting. HUD either accepts the AFH or provides the program participant written notification of why the AFH was not accepted and guidance on how the AFH should be revised in order to be accepted. HUD will not accept an AFH if HUD finds that an AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete.
>
> *Part Four:* The goals identified in the AFH must inform the strategies and actions of the Consolidated Plan, the Annual Action Plan, the PHA Plan, and the Capital Fund Plan.

The AFH will require state and local government organizations to set their own goals and timelines for achieving fair housing progress. HUD will then use the AFH to gauge progress and could level penalties

for those jurisdictions that are deemed to have become non-compliant with their goals and timelines. While HUD has indicated this is not meant to be an enforcement tool, there are financial penalties that may occur, such as the withholding of CDBG funds, if entities do not comply with the rule.

There were some attempts in Congress to include language blocking implementation of the rule in the FY 2016 omnibus appropriations bill, but those efforts were ultimately unsuccessful.

RECOMMENDED POSITION: ***Monitor*** implementation of the Department of Housing and Urban Development's Assessment of Fair Housing Rule.

FEDERAL ISSUE: Economic Development Administration Programs

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Economic Development Administration (EDA) is primarily a granting agency that funds economic development projects throughout the country. Successful projects usually leverage roughly 200 new jobs and $24 million in private investment for every $1 million of EDA investment.

Local governments or non-profits, such as Charlotte County, are local sponsors of the projects. For example, infrastructure projects such as those designed to support the recent construction of a Cheney Brothers distribution center in Charlotte County could be eligible for funding from the EDA. Funding from the EDA could also offer opportunities to help fund projects in Community Redevelopment Areas, including road and water infrastructure improvements that can help reinvigorate the regions and lead to additional reinvestment in homes and businesses.

The President's Deficit Commission, as well as more recent Congressional proposals, have proposed the elimination of the EDA, as its mission is seen as duplicative by some. In June 2012 the Senate failed to pass the "Economic Development Revitalization Act," which would have reauthorized the Economic Development Administration (EDA) through 2015. EDA's authorization expired in September 2008, but funding via the appropriations process has kept it functioning without an authorization. In addition to reauthorizing EDA, the Senate legislation would increase the authorized funding for the program from $300 to $500 million annually. Despite the failure to pass the legislation, the EDA will continue to operate through the annual appropriations process if provided sufficient funding by Congress.

The FY 2015 omnibus appropriations bill provided a modest increase in funding for the EDA from $247 million in FY 2014 to $250 million. The Administration then proposed an additional increase in funding for the EDA in its FY 2016 budget request to just over $273 million. Congress, however, provided $261 million in the final FY 2016 omnibus.

RECOMMENDED POSITION: ***Support*** Charlotte County EDA grant applications as applicable, including potential applications for improvements to Parkside, Charlotte Harbor, and Murdock Village Community Redevelopment Areas or other infrastructure projects. ***Support*** continued adequate funding of the Economic Development Administration.

FEDERAL ISSUE: Remote Sales-Tax Legislation

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: With some limited exceptions, retailers are only required to collect sales tax in states where they have brick-and-mortar stores. The burden then falls to consumers to report to state tax departments any sales taxes they owe for online purchases. Often, due to complex reporting requirements, consumers do not report those purchases when completing their tax returns. As a result, local retailers can be at a competitive disadvantage because they must collect sales taxes while out-of-state retailers, including many large online and catalog retailers, often offer their customers a discount by collecting no state or local sales taxes.

Therefore, the current sales tax system is perceived as being unfair to brick-and-mortar retailers that employ local residents, including local stores as well as national chains like Best Buy or Home Depot. This lost revenue is also a drain on local government resources. In 2014, uncollected sales tax was estimated to have cost local governments $23 billion nationwide. Legislation to correct this inequity has the support of local, state, and national business groups, such as the National Governors Association, the National Conference of State Legislators, the Council of State Governments, the National Association of Counties, the U.S. Chamber of Commerce, the Florida Chamber of Commerce, Associated Industries of Florida, Florida TaxWatch, Florida Retail Federation, and Amazon.com, among others.

To create a level playing field, Congress introduced the Marketplace Fairness Act in both the House and Senate in the 113th Congress. The bill would have created two systems from which states could choose to facilitate the process of collecting these taxes. The first would have been the already-established Streamlined Sales and Use Tax Agreement, which would have simplified state and local sales and use tax laws. Twenty-four states have already signed this agreement. The second alternative would have allowed for states to meet minimum requirements for their state tax laws and administration thereof. To protect small, online retailers, this legislation also exempted sellers who make less than $1,000,000 in total remote sales from the requirement to collect the tax.

In 2013, the Senate passed the Marketplace Fairness Act with bipartisan support by a vote of 70-24, with Senator Nelson voting for the measure and Senator Rubio against it. In the House, companion legislation was not considered, although it had 67 cosponsors, including Florida Representatives Deutch, Crenshaw, Ross, Wilson, and Diaz-Balart.

The issue reemerged in the 114th Congress. House Judiciary Chairman Bob Goodlatte (R-VA) and Rep. Anna Eshoo (D-CA) circulated a discussion draft of remote sales tax legislation as an alternative to the Marketplace Fairness Act. Under the draft, only states that join a multi-state clearinghouse would have the authority to collect sales tax revenue on out-of-state purchases, and retailers would charge sales tax based on their own state and local rules. The clearinghouse would then divide the sales tax revenue among member states. The draft, however, did not gain much traction.

Meanwhile, House Oversight and Government Reform Committee Chairman Jason Chaffetz (R-UT) introduced legislation in June 2015 – the Remote Transactions Parity Act (RTPA) (H.R. 2775) - that attempts to bridge the gap between the two sides of the issue by addressing lingering concerns raised by those who believe instituting a remote sales tax would be an increase in taxes. Under the Chaffetz proposal, and similar to the MFA, the RTPA would create two options for states to collect remote sales tax. The first would be for member states of the SSUTA, and the second would allow non-members to

require collection if they implement certain tax law simplification requirements that are similar to those contained in the MFA. The largest difference between the RTPA and the MFA, however, is the definition of a remote seller. Both define a remote seller as one that does not have a physical presence in the state, but the RTPA goes further to include a definition of physical presence. In addition, the RTPA includes a phase-out for the small seller exception. Rather than permanently exempting sellers with sales less than $1 million annually, the RTPA would exempt sellers with less than $10 million in annual revenue the first year, less than $5 million the second year, and less than $1 million the third year, with the small seller exception completely eliminated after that. The RTPA currently has 55 bipartisan cosponsors, but has not yet seen any action.

In the Senate, there has been some discussion of attaching a remote sales tax amendment to the House-passed Permanent Internet Tax Freedom Act (PITFA). Similar efforts were attempted last year, but were unsuccessful. PITFA, which is considered a non-controversial measure, would permanently extend the ban on state and local taxation of the Internet, and was passed by the House in June 2015. Those plans generally have bipartisan support, but some powerful members of the Senate, such as Senator Ron Wyden (D-OR), the Ranking Member of the Senate Finance Committee, have expressed concerns about attaching the two issues, arguing they are contradictory. If PITFA is to be used as a vehicle for remote sales tax legislation, an agreement must be reached prior to December 2016 when the current ban on internet taxes expires. To further complicate this strategy, PITFA has been included in the customs bill, which has already been passed by the House. The Senate is expected to vote on the bill in late January of 2016, but the inclusion of PITFA remains a sticking point.

Meanwhile, the rise of Alibaba, the online Chinese retailer that has been compared to a combination of Amazon, eBay and PayPal, could perhaps sway opinions of those opposed to such legislation. In 2014, Alibaba accounted for $420 billion in online sales and has emerged as a serious competitor to American online retailers, with none of their revenue remaining in the U.S., nor taxed.

RECOMMENDED POSITION: ***Support*** legislation that requires companies making catalog and internet sales to collect and remit the associated taxes. ***Support*** federal tax policies that maintain revenue streams to local governments.

FEDERAL ISSUE: Transient Occupancy Taxes

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In the 111th and 113th Congresses, attempts were made to insert language into various pieces of legislation that would have exempted Online Travel Companies (OTC's, e.g., Expedia, Travelocity, etc.) from remitting the full bed tax rate collected from consumers to the appropriate local government. For instance, if an online travel broker were to pay $60 for a room in Charlotte County and then sell that room to a consumer for $100, they would be able to, under the proposal, only remit $6 dollars to the local government instead of $10 (using a 10 percent bed tax for illustrative purposes).

In 2009, Charlotte County and 16 other Florida counties filed an action against a number of online travel companies alleging that the companies have failed to collect and/or pay taxes under the respective tourist development tax ordinances. Charlotte County and its partners in the lawsuit agreed to settle with the online travel companies for $6.1 million in 2010. During 2012, there were several Florida State Circuit Court cases that ruled in favor of the OTCs. Two cases, including the 17 county case, cited that Florida law is not clear on the issue, while a Circuit Court Judge ruled more directly that the OTCs only owe local tourist taxes on the discounted rates they paid for the rooms. Then, in June of 2015, the Florida Supreme Court affirmed the lower court rulings, stating that online travel companies are not hotels and, therefore, do not have to pay occupancy fees.

Meanwhile, in 2012, the District of Columbia government won a suit where a judge ruled that online travel firms should repay back taxes on the full retail price of hotel rooms they sold to consumers in the years after the D.C. City Council passed legislation mandating they do so. In 2014, a conditional settlement was reached in this case with six online travel firms. Although they have a right to appeal the D.C Superior Court decision, they agreed to pay $60.9 million in back taxes to the D.C. government. Between 1998 and 2010, the amount owed in the lawsuit was estimated to be over $200 million.

In 2015, local governments reportedly had filed 88 lawsuits against Expedia and others for tax underpayment. The company won dismissal in 23 cases while 35 remain active. The remainder of the cases have been settled, put on hold, referred to administrative proceedings, or are otherwise resolved. A 2011 estimate by the Center for Budget and Policy Priorities suggests that state and local governments lose as much as $396 million a year due to such remittance practices by online hotel purveyors.

These examples demonstrate how courts across the country have ruled differently on this issue over the past few years, which has led online travel purveyors to continue to seek federal legislation that would codify their goal of not remitting taxes on the price of the hotel room paid by the consumer. In 2012, several of these online discount travel brokers (including Expedia, Orbitz, and Priceline) organized and registered to lobby under a new organization called the "Interactive Travel Services Association," whose purpose is to advocate on several issues, including "taxes and fees related to travel."

In May 2013, Expedia and other online hotel room purveyors attempted to amend the Marketplace Fairness Act to achieve their transient occupancy tax objectives. Ultimately, this effort was unsuccessful and the bill was passed out of the Senate without this language.

In Fiscal Year 2015, Charlotte County collected nearly $3.6 million in transient occupancy taxes, which is used to support the tourism industry in the region. The County saw a roughly 16 percent increase in

tourism tax revenue from the previous year. This level of funding underscores the importance of this revenue source and the need to ensure it is not constrained by detrimental legislation.

RECOMMENDED POSITION: ***Oppose*** legislation that would exempt Internet travel brokers from paying taxes on the full room rate paid by the consumer, thereby costing Charlotte County and its political subdivisions the opportunity to collect the appropriate Transient Occupancy Taxes from visitors to the region.

FEDERAL ISSUE: Tax-Exempt Bonds

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Although municipal bonds have been tax-exempt for almost 100 years, a number of federal proposals have been offered over the past few years that target this exemption, particularly as part of the debate to end the sequester or reduce federal spending. With local governments facing severe budget difficulties, any proposal to limit the tax exemption would put more pressure on local finances by reducing demand for tax-exempt bonds and increase borrowing costs for state and local governments, ultimately leading to higher taxes or reduced services.

It is estimated that the difference in the rate of earnings the County and other local governments would need to offer prospective buyers for their taxable bonds would depend on the market, but typically would range from 1.5 to 2 percent more for those offerings. On $1 million borrowed, this would likely cost $20,000 more in interest per year. Taking this further, if the County were to amortize a $100 million loan over 30 years at taxable bond rates two percent higher than if the bonds were tax-exempt, the additional cost to taxpayers over those 30 years could be roughly $30 million.

Following Paul Ryan's promotion to Speaker of the House, Rep. Kevin Brady (R-TX) has assumed the chairmanship of the House Ways and Means Committee. It is currently unclear what Chairman Brady's position is on bonds; but if his beliefs on the issue match those of his predecessor, the tax exemption on municipal bonds may be at risk in the future.

In the Senate, Ron Wyden (D-OR) sponsored legislation with Dan Coats (R-IN) during the 112th Congress that proposed replacing tax-exempt bonds with taxable bonds and a tax credit. Although Senator Wyden did not reintroduce the same legislation during the 113th Congress, he continued to discuss the need for comprehensive tax reform when he became the Chair of the Senate Finance Committee in 2014. Republicans now control the Senate in the 114th Congress, however, which means Senator Wyden has become the Ranking Member and Senator Orrin Hatch (R-UT) has assumed the chairmanship. Like Senator Wyden, Senator Hatch has voiced his support for comprehensive tax reform. However, his position on the tax exemption for municipal bonds is unclear.

As in previous years, the Administration proposed a 28 percent limit on all itemized deductions for high-income individuals in its Fiscal Year (FY) 2016 budget. It is likely that this provision will also be included in the Administration's FY 2017 budget. If accepted by Congress, this would apply to all new and outstanding municipal bonds. According to a study conducted by the National Association of Counties, if this 28 percent cap had been in place over the past decade, borrowing costs to state and local governments would have increased by over $173 billion, while a full repeal would cost nearly $500 billion over the same time period.

Thus far, Congress has not undertaken any recent efforts to alter the tax-exempt status of municipal bonds. In March 2105, over 100 members of the House of Representatives signed a letter to congressional leadership asking that the current tax exemption for municipal bonds remain in place.

RECOMMENDED POSITION: ***Oppose*** legislation that would threaten the tax exemption on state and local bonds, including a 28 percent cap on tax-exempt municipal bonds.