

# Akerman Practice Update

LAND USE & DEVELOPMENT

December 2010

## What's Next for Florida Growth Management? A Post-Election Appraisal

**Valerie Hubbard, FAICP, LEED AP\***  
[valerie.hubbard@akerman.com](mailto:valerie.hubbard@akerman.com)

A number of key outcomes of the November elections are likely to alter the landscape for Florida growth management for the next several years. This update highlights important issues to watch in the coming months.

### Effect of Amendment 4's Crushing Defeat

Constitutional Amendment 4 (a.k.a. Hometown Democracy) would have required a local referendum for comprehensive plan amendments in every jurisdiction throughout the state; thereby increasing the cost, timing and uncertainty of such changes. The proposal was opposed by a wide variety of groups, including business and development interests, local governments, and planners. Even Florida Department of Community Affairs (DCA) Secretary Tom Pelham thought the proposal was flawed. Although Amendment 4 appeared likely to pass until recently, voter support dwindled in the weeks before the election and the measure lost by a margin of 2 to 1. The threat of the proposed constitutional amendment has influenced development and legislative decisions for the past several years, and its defeat substantially changes the growth management backdrop in Florida.

### A New Legislative Environment

In anticipation of the vote on Amendment 4, the 2010 Legislature appeared wary of passing any legislation that could be interpreted as undermining current



**Akerman Senterfitt • Akerman Senterfitt LLP • Attorneys at Law**

BOCA RATON DALLAS DENVER FORT LAUDERDALE JACKSONVILLE LAS VEGAS LOS ANGELES MADISON MIAMI NEW YORK ORLANDO  
PALM BEACH TALLAHASSEE TAMPA TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH

[akerman.com](http://akerman.com)

\* Not admitted to the practice of law

“With the threat of Amendment 4 removed and the new Legislature and Governor championing economic development and regulatory reform, more significant growth management legislation may be advanced.”

growth management laws. With the threat of Amendment 4 removed and the new Legislature and Governor championing economic development and regulatory reform, more significant growth management legislation may be advanced. Legislative initiatives could include reducing regulation in urban areas or for business development and job creation, as well as clarifying some of the more disputed existing regulations. For instance, legislation has been proposed in past sessions to limit application of the “demonstrated need” criterion and that could again be on the table.

The new Legislature took its first significant steps in the Special Session on November 16 by overriding Governor Crist’s vetoes on several bills passed during the 2010 session. Among these was HB 1565, which places additional requirements on rule-making by state agencies. Under the legislation, which went into effect November 17, 2010, many, if not most, rules will require legislative approval. This will affect pending rules as well as future rule-making by DCA, DEP, and other state agencies.

### **SB 360 Challenge Update**

SB 360, passed in 2009, provided certain “dense urban land areas” with regulatory relief in the form of Development of Regional Impact (DRI) exemptions and transportation concurrency exception areas (TCEAs). It also provided a 2-year extension to many development approvals. The law was challenged by a group of local governments as unconstitutional. The court ruled in favor of the local governments, but due to a pending appeal, the law is still in effect. Nevertheless, the suit has had a chilling effect on implementation. New legislation may be proposed to resolve the constitutional challenges as well as the ambiguities that have led to problems in implementing SB 360. This could open the doors for wider implementation of transportation concurrency exception areas and DRI exemption areas throughout the state.

### **Changes in the Department of Community Affairs**

The state’s land planning agency was up for its scheduled “sunset” review in 2010. With Amendment 4 on the horizon, the 2010 Legislature deferred a decision on the agency’s future. The DCA has been criticized during the Crist administration for a rather aggressive regulatory approach, particularly on certain key issues such as the “demonstrated need” for future land use map amendments. Assuming the 2011 Legislature retains DCA as a state agency, a change of leadership at the Department is certain. Secretary Tom Pelham has stated that he will be leaving the agency with the change of administration.

“The new legislative environment is already having impacts on DCA decisions.”

A new agency head could be appointed early in 2011, possibly establishing a less stringent regulatory environment for projects that are moving through compliance review or have been bogged down in non-compliance negotiations.

The new legislative environment is already having impacts on DCA decisions. In the wake of the Legislature’s recent action on HB 1565, DCA has abandoned two significant rule-making initiatives. The first involved new energy efficiency and greenhouse gas emission requirements for comprehensive plans pursuant to HB 697 (2008 session). The other would have set requirements regarding the very controversial “demonstrated need” issue mentioned above. Under the new requirements of HB 1565, these rules would likely have been forced to obtain legislative approval.

With the potential for such significant changes in the growth management arena, it will be critical for development interests and local governments to stay up to date. Akerman attorneys and consultants can assist clients in understanding the new regulatory environment and taking maximum advantage of the opportunities created.

---

For more information about our Land Use & Development practice, please contact:

**Neisen Kasdin** Chair, Land Use & Entitlements Practice  
305.982.5629

**Cecelia Bonifay** Chair, Green & Sustainable Development Practice  
407.419.8540

**Valerie Hubbard** Director of Planning Services  
850.521.8003

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2010) in number of lawyers and is the leading Florida firm. With 500 lawyers and government affairs professionals, Akerman serves clients throughout the U.S. and overseas from Florida, New York, Washington, D.C., California, Virginia, Colorado, Nevada, and Texas.

