



# MIAMI BEACH

OFFICE OF THE CITY MANAGER  
NO. LTC # 078-2010

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LETTER TO COMMISSION  
CITY CLERK'S OFFICE

TO: Mayor Matti Herrera Bower and  
Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: March 12, 2010

SUBJECT: **Florida Legislative Session Reports**

The purpose of this LTC is to provide the Mayor and City Commission with the attached legislative reports for the first two weeks of the 2010 Legislative Session.

These reports include information on Condominium Reform, Elevator Safety, Expansion of Gambling, Online Hotel Taxes, Sexual Predators, Beach Renourishment, Entertainment Industry Incentives, Affordable Housing and Education. The City's lobbyists will continue to provide these reports during every week of the 60-day Legislative Session.

An additional item which is referenced in the report is provided as an attachment to this LTC. This is a detailed letter from the City's lobbyists requested by Commissioner Wolfson regarding the legal arguments associated with the potential of legislation authorizing the expansion of gambling in Florida.

If you have any questions or need additional information, please do not hesitate to contact me.

  
JMG/HE/kc

Attachments (3)

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JONATHAN M.

MARGARET A. MENDUNI

MEMORANDUM

**TO:** Mayor Matti Bower  
 City Commissioners and City Manager Gonzalez  
 City of Miami Beach

**VIA:** E-mail to Kevin Crowder

**FROM:** Gary Rutledge  
 Fausto Gomez  
 Bob Levy  
 Margie Menduni  
 Manny Reyes  
 Jose Diaz  
 Jon Costello

**DATE:** March 8, 2010

**SUBJECT:** 2010 Legislative Report - Week 1

The following represents activities on Miami Beach legislative priorities during the first week of the Legislative Session.

**Condominium Reform and Elevator Safety**

A number of condominium bills were heard during this first week. They include the following:

- HB 329 relating to condominium foreclosures - This bill by Representative Robiana was temporarily postponed in House Civil Justice and Courts Policy Committee.
- HB 561 and SB 1196 and 1222 relating to community associations
- HB 551 by Bogdanoff and Hudson
- HB 329 Relating to Condominium Foreclosures - HB 329 by Rep. Robaina was temporarily postponed in the House Civil Justice & Courts Policy Committee on Monday.
- HB 561 and SB's 1196 & 1222 Relating to Community Associations - HB 561 by Bogdanoff and Hudson, which is the major condominium bill moving through the House, was taken up and passed 11-1 by the Insurance, Business & Financial Affairs Policy Committee on Wednesday. Prior to being passed, the bill was amended to include a provision that would give condominiums and cooperatives until July 1, 2013 to retrofit their elevators with Phase II Firefighter Services. The only Representative to vote against the bill was Rep. Taylor, who is a former firefighter. HB

561 has one remaining committee stop before it is ready to be heard on the House floor.

- SB's 1196 by Fasano and 1222 by Ring were taken up in Senate Regulated Industries on Wednesday. A committee substitute that combined both bills passed unanimously. The bill will proceed as SB 1196 and has three remaining committee stops before it is ready for the Senate floor. At this time the bill does not contain the sprinkler retrofit opt-out language.
- HB 666, Relating to building safety - HB 663 by Rep. Aubuchon was passed by a vote of 11 to 1 by the House Insurance, Business & Financial Affairs Policy Committee on Wednesday. The bill addresses a number of building safety issues, but of interest to the City is a provision that would allow condominiums with elevators issued a certificate of operation prior to July 1, 2009 not to have to retrofit for Phase Two Firefighter Services until the elevators are replaced. This bill has two remaining committee stops before it is ready to be heard on the House floor.
- The companion to HB 663, which also contains the beneficial elevator language, is SB 648 by Senator Bennett. SB 648 has already passed its first committee stop and has four remaining before it is ready to be heard on the Senate floor.
- HB 1523 and SB 2270, relating to non-judicial foreclosures - HB 1523 by Rep. Grady, which creates the "Homeowner Relief & Housing Recovery Act" and provides general provisions for nonjudicial foreclosures, was filed on Monday. At this time the bill has not been referred to committees.
- SB 2270, the presumptive companion to HB 1523, which creates the "Nonjudicial Foreclosure Act for Nonhomesteaded Properties," was referred to three committees this week but has yet to be placed on an agenda.
- Proposed Committee Bill GAP 22, relating to fire sprinklers - GAP22 was passed unanimously by the House Government Affairs Policy Committee on Wednesday. The bill drew significant opposition from representatives of Florida Professional Firefighters and the sprinkler industry, who said that the sprinklers offer a greater level of protection to homes and to firefighters who might have to enter burning houses. Homebuilders argue they can not handle the additional expense, especially while the housing market is still in decline. Currently, the Florida Building Commission adopts the state building codes based on recommendations of the International Residential Code, which recently approved an amendment that would require all newly constructed one and two-family homes and town homes to include fire sprinklers. The commission is expected to adopt similar standards in the 2010 edition of the Florida Building Code. The legislation, approved by the committee, would ban the commission from doing that. The companion to GAP22 is SB 846 by Senator Bennett. SB 846 has been referred to three committees but has yet to be placed on an agenda.

### **Growth Management**

**SB 1742, Growth Management.** This bill by Senator Bennett was heard in Senate Community Affairs Committee and passed with a strike all amendment. The bill is intended to address the cost of transportation infrastructure with development. The bill favors the developer. The strike all amendment removed the requirement that developers no longer would have to pay for roads and schools in dense urban land areas. The bill has two more committees of reference and at this time no House companion.

### **Expansion of Gambling**

Gary Rutledge provided Commissioner Wolfson a detailed letter relative to the legal ramifications associated with casino gambling outside of pari-mutuel facilities. There has been no activity this week relative to that subject.

### **Defibrillator Requirement for Public Buildings**

Representative Steinberg and Senator Altman have filed defibrillator bills, HB 1355 and SB 2556. The bills require the state Surgeon General promulgate rules for placement of automatic defibrillators in public assembly places with a seating capacity of at least 1,000 people, including but not limited to stadiums, ballparks, gymnasiums, field houses, arenas, civic centers, concert halls, recital halls, theatres, amphitheatres and auditoriums. The House Bill has not been referenced. The Senate Bill has three committees of reference.

### **Online Hotel Tax Collections**

The House Finance and Tax Council conducted a workshop on House Bill 335 by Long and House Bill 1241 by Patronis. Representative Long's bill requires the Internet booker to pay the taxes due to local governments while Representative Patronis' bill makes the hotel responsible for taxes due. The pros and cons were thoroughly discussed. No conclusions or recommendations were forthcoming. Chair Bogdanoff asked committee members to reflect further on the issue. She did say that it was important to have the issue resolved this Session.

### **Energy Economic Zones**

Bills on behalf of Sarasota County which is another pilot community have been filed by Representative Fitzgerald, HB 1461 and Senator Bennett, SB 2644. The bills purport to develop criteria for the development of energy economic zones prior to the completion of the pilot program. This poses a problem for the City of Miami Beach who is the other pilot community. Discussions are ongoing with the lobbyist from Sarasota, the Department of Community Affairs, OTTED and the Governor's Energy Office.

### **Sexual Predators and Offenders**

**SB 1284, Sexual Predators.** This bill by Senators Aronberg and Crist deals with the prevention of loitering by sexual offenders within a certain distance of locations where children regularly congregate. The bill also includes local ordinances relative to residency limitations for sexual predators. The bill was heard this week in Criminal Justice. There was lot of contentious discussion about the residency section of the bill. Senator Crist wanted the two issues to be separated. Aronberg did not. The bill was temporarily postponed. The companion, HB 119 by Glorioso, was heard in Public Safety and Domestic Security Policy Committee. A strike all amendment was passed by the committee. The bill has three more committees in the House.

### **Beach Renourishment Funding**

With the state budget in dire straits, the funding for beach renourishment is threatened. There are three beach renourishment projects in Miami-Dade County, Jacksonville and Martin County which have federal funding and DEP as well as the Florida Beach and Shore Preservation Society is hoping will spur enough state matching funds for those three projects. Miami-Dade County is at the top of the list. We have met with Representative Rivera who is Appropriations Chair in the House and he is committed to doing everything he can to fund Miami-Dade's beach program. We have met with Debbie Flack from the Beach and Shore Preservation Society several times and will continue to work on the appropriations.

### **Entertainment Industry Incentives**

HB 697 by Precourt was heard, amended and passed out of the Economic Development Policy Committee. The bill converts the industry's financial incentive program to a corporate income tax and sales tax credit bill. The bill is only referenced to one more committee in the House. The Senate Bill,

1430 by Haridopolos is referred to four committees and has not been heard yet.

### **TABOR**

Senator Haridopolos has filed SB 2420, a proposed amendment to the state constitution, limiting state and local government revenues and requiring voter approval of new taxes and fees. The bill is referenced to five committees. There is no House companion filed as yet.

### **Education Issues**

Representative Rivera and Senator Garcia have filed HB 51 and SB 2686 which require the Department of Education to contract with a out-of-state post-secondary educational institution to conduct a study to analyze Florida's district cost differential index. Neither bill has been referenced.

Florida is a finalist for funding in the federal Race to the Top Program. A final decision is expected this month.

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MEMORANDUM

T0: Mayor Matti Bower  
City Commissioners and City Manager Gonzalez  
City of Miami Beach

VIA: E-mail to Kevin Crowder

FROM: Gary Rutledge  
Fausto Gomez  
Bob Levy  
Margie Menduni  
Manny Reyes  
Jose Diaz  
Jon Costello

DATE: March 12, 2010

SUBJECT: **2010 Legislative Report - Week 2**

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The following represents activities on Miami Beach legislative priorities during the second week of the Legislative Session.

**Condominium Reform and Elevator Safety**

***HB 329 Relating to Condominium Foreclosures***

HB 329 by Rep. Robaina was taken up for the third time by the House Civil Justice & Courts Policy Committee after being TP'd the previous two meetings. The bill was amended with a strike all amendment and called to question by Rep. Murzin. In debate, Rep. Grady argued that the bill infringes on the property rights of landlords and stated that despite agreeing with the intent of the bill his concern that the bill is unconstitutional due to it violating current contractual agreements between tenants, landlords and condo associations requires that he vote against the bill. Rep. Robaina argued that property rights and the constitutional arguments that Rep. Grady made were not really the issue and that the real issue is that the banking lobby does not like his

bill. After debate, the vote was taken and Rep. Robaina's HB 329 was defeated by a vote of 9 to 4.

***HB 561 and SB 1196 Relating to Community Associations***

HB 561 by Bogdanoff and Hudson, the major condominium bill moving through the House, was not heard this week. The bill will next be heard in House Criminal & Civil Justice Policy Committee but has yet to be placed on the agenda.

SB 1196 by Fasano and Ring was also not heard this week, however the bill was referenced to an additional committee, Senate Military Affairs and Domestic Security Committee. SB 1196 has four remaining committee stops before it is ready to be heard on the Senate floor. Based on communications with Sen. Fasano and Sen. Ring's offices, the opt out language for sprinkler retrofits should be amended into SB 1196 next week in committee.

***HB 1523 and SB 2270 Relating to Nonjudicial Foreclosures***

HB 1523 by Rep. Grady, which creates the "Homeowner Relief & Housing Recovery Act" and provides general provisions for nonjudicial foreclosures, was referred to three committees this week but has yet to be placed on an agenda for a hearing.

SB 2270, the presumptive companion to HB 1523, which creates the "Nonjudicial Foreclosure Act for Nonhomesteaded Properties," was not acted upon this week and has three committee stops.

***Proposed Committee Bill GAP22/HB7095***

GAP22 was filed as HB 7095 and referred to the calendar this week. The companion to HB 7095, SB 846 by Senator Bennett, has been referred to three committees but has yet to be placed on an agenda.

***SB 840 Relating to Community Associations***

SB 840 by Sen. Sobel is scheduled to be heard in the Senate Community Affairs Committee on 3/17/2010. The bill revises the definition of the term "developer" to exclude a bulk assignee or bulk buyer, revises the jurisdiction of the Florida Division of Condominiums, Timeshares, and Mobile Homes to include bulk assignees and bulk buyers, provides for the assignment of developer rights to and the assumption of developer rights by a bulk assignee, and specifies liabilities of bulk assignees and bulk buyers.

**Growth Management**

Proposed Committee Bill MLA 10-06 passed out of Military and Local Affairs. This bill addresses certain changes which were made to the growth management statute in the 2009 Legislative Session related to permitting which were changed in the 2009 Session. The unclarity from the changes from last Session has lawsuits by local governments and general confusion about the meaning of the bill. This bill provides that any properly noticed two-year permit

extension as the result of changes to Chapter 209-96, Laws of Florida, is valid and shall remain in effect. It further states that amendments to local government comprehensive plans to implement transportation concurrency exception areas which were also addressed in that same chapter of law shall remain in effect. The third provision deals with certain large developments and the DRI process. It provides that a development application that has been filed or approved or a completed development application which has been approved or is pending and continue in good faith do not have to undergo a full DRI review. The proposed committee substitute has become HB 7099.

### **Expansion of Gambling**

The House Select Committee on Seminole Indian Compact Review heard a presentation from Amy Baker from the Office of Economic and Demographic Research regarding economic implications for expansion of gambling. A presentation was also made by Nick Iarossi on behalf of Sands together with Andy Abboud, Vice President, Las Vegas Sands Government Relations and Community Development, who discussed Las Vegas style gambling. It is apparent there is not any realistic chance that legislation will be considered this year to authorize new free-standing casinos. There are too many legal, legislative and political hurdles to clear.

### **Energy Economic Zone**

We participated in a conference call with Kevin Crowder and Representatives from Sarasota County to discuss their legislative proposals. They will be preparing an amendment to rework parts of the bill. We will continue to work on this issue.

### **Redlight Cameras**

HB 325 by Reagan passed out of Health Care Regulation Policy Committee. It has only one committee of reference remaining. Its companion, SB 2166 by Altman is scheduled to be heard next week in its first committee of reference.

### **Sexual Predators and Offenders**

SB 1284 by Aronberg and Crist passed out of Criminal Justice Committee with a strike all amendment. The amendment leaves in place Miami-Dade County's ordinance relative to sexual offender and predators. The bill has three more committees of reference. The House Bill, 119 by Glorioso, has passed one committee and is scheduled for Military and Local Affairs on 3/15.

### **Local Authority**

SB 320 related to Household Moving by Garcia passed out of the Commerce Committee with an amendment. The bill removes the requirement that movers and brokers obtain a local license or register locally. The bill originally would have preempted local governments from enacting



ordinances regulating movers of household goods or brokers. With the amendment passed in this committee, there is no preemption on ordinances or regulations enacted prior to January 1, 2010, or a subsequent amendment to such an ordinance or regulation. There is a stipulation that registration fees for such an ordinance or regulation must be reasonable and not exceed the cost of administering the ordinance or regulation. It clearly states that local governments are not preempted from levying local business taxes. The bill has three more committees of reference. The House companion, HB 199 by Weinstein, has two committees of reference remaining.

SB 690 relating to Local Government Accountability by Dean, passed the Senate Finance and Tax Committee. This bill sets minimum standards for budgeting by local governments; directs local governments to post budgets on a website; requires local governments to file their annual financial reports and annual financial audit reports within 9 months of the fiscal year end with the Department of Finance and Tax. The bill has two more committees of reference. It has no House companion filed.

SB 570 relating to Solid Waste Recycling by Constantine was workshopped in the Environmental Preservation & Conservation Committee. Senator Constantine presented a proposed committee substitute. The bill would require local governments to report their recycling rates and outlines incremental recycling goals for the state through 2020. It encourages local governments to provide recyclable containers or single stream recycling containers for multi-family dwellings. It is scheduled to be heard again next week in Environmental Preservation & Conservation. There is no House bill filed.

### **Affordable Housing**

We participated in a conference call with Kevin Crowder and Deby Schwartz, aide to Senator Gelber, in regard to the most recent affordable housing request from the City to DCA through the NSP program. Senator Gelber has been asked to intercede on behalf of the City to expedite the application.

HB 665 by Aubuchon, Affordable Housing, contains among its many provisions the repeal of the cap on the Sadowski Fund. The bill has passed out of Military and Local Affairs and is referenced to two more committees. A related bill, HB 95 by Saunders, also removes the cap on the Sadowski Trust Fund. However, it does not contain the other affordable housing provisions in the Aubuchon bill. It has not been heard.

### **Beach Renourishment**

Although not in its final form, the Senate Appropriations Committee has recommended \$15 million for statewide beach renourishment. This would provide \$6.7 million to Miami-Dade County which includes the City's beach renourishment project.

### **Education**

Governor Crist and state education officials plan to present their Race to the Top application to the Department of Education in Washington on Tuesday of next week.

SB 1074 by Wise passed out of Banking and Insurance Committee and is on the agenda of Education and Pre-K-12 for next week. This bill requires the State Fire Marshall to work with the Department of Education to develop fire safety standards for public schools and colleges. It requires the State Fire Marshall to conduct inspections of schools where local government does not employ or contract with a certified fire safety inspector. Its companion, HB 531 by Weinstein, has not been heard.

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March 4, 2010

## VIA ELECTRONIC TRANSMISSION

Honorable Jonah Wolfson  
City of Miami Beach Commissioner  
1700 Convention Center Drive  
4th Floor  
Miami Beach, FL 33139

Dear Commissioner Wolfson:

It was a pleasure speaking with you regarding the City of Miami Beach's concerns over the potential for casino gaming expansion in Miami-Dade County. This correspondence is provided in response to your questions concerning legal issues surrounding the potential for such expansion. In particular, you inquired as to the extent slot machine gaming may be authorized by the Florida Legislature at non-pari-mutuel facilities in Miami-Dade County. As explained below, it appears that the Legislature may not authorize slot machine gaming at facilities other than those pari-mutuel facilities identified by Article X, Section 23, Florida Constitution (1968), without an additional constitutional amendment.

As you are aware, Article X, Section 23 of the Florida Constitution (1968), authorized seven (7) pari-mutuel facilities in Miami-Dade and Broward Counties to conduct slot machine gaming at their existing locations subject to county referendum. Referenda have subsequently successfully been conducted in both counties. The facilities expressly authorized by such constitutional amendment for the conduct of slot machine gaming are Calder Race Course, Dania Jai Alai, Flagler Dog Track and Magic City Casino, Gulfstream Park, Isle Casino and Racing at Pompano Park, Mardi Gras Racetrack and Gaming Center, and Miami Jai Alai. The inclusion of these facilities within the 2004 constitutional amendment is based upon their physical location in Broward and Miami-Dade Counties and their conduct of live racing or games during the 2002 and 2003 calendar years at those physical locations.

The paramount question concerns what effect the 2004 constitutional amendment authorizing slot machines in Miami-Dade and Broward Counties has upon locations which are not expressly described in such constitutional amendment. Prior to the 2004 constitutional

**RUTLEDGE, ECENIA & PURNELL**

Honorable Jonah Wolfson

March 4, 2010

Page 2

amendment, Florida courts consistently concluded that slot machines could be authorized by the Legislature. In Hardison v. Coleman, 121 Fla. 892 (Fla. 1936), the Florida Supreme Court considered whether the classic “one-armed bandit” fell within the lottery prohibition of the 1885 Constitution. The Court concluded that the slot machine did not constitute a lottery and was not prohibited by the subject constitutional provision. See Hardison, 121 Fla. at 901. The Court found that “[i]t may be true that every lottery is a game or gambling device, but it does not follow that every game or gambling device is a lottery within the meaning of section 23, article 3, of the Constitution of 1885.” Id. at 896. The Court’s holding was based upon the previous decision of Lee v. City of Miami, 121 Fla. 93 (Fla. 1935), in which the Court considered the validity of a legislative authorization of slot machines and held that “a slot machine of the type described in the act was not a lottery device within the meaning of the [Florida Constitution] prohibiting lotteries in this state.”

The Florida Constitution generally prohibits the conduct of lotteries with the exception of the State Lottery. Art. X, §§ 7, 15, Fla. Const. Citing this provision, Florida Attorney General Robert Butterworth previously concluded that the Legislature lacked authority to authorize those forms of gambling associated with casino operations. See Op. Att’y Gen. Fla. 94-06 (1994). The opinion generally states that a lottery may be identified by the presence of the following three elements: (1) a prize, (2) awarded by chance, (3) for consideration. In addition, the Opinion concluded that games or activities consisting of the above-mentioned elements would fall within the scope of the constitutional prohibition against lotteries. It should be noted that such an opinion is not binding precedent upon any Florida court even though it may be looked upon for guidance. The opinion’s analysis fails to cite or discuss previous Florida Supreme Court opinions, including Lee v. City of Miami and Hardison v. Coleman, which concluded that slot machines and bingo operations, which clearly consist of the enumerated elements, do not fall within the constitutional lottery prohibition. It would appear that the Florida Supreme Court opinions are more persuasive than the 1996 attorney general opinion.

The 2004 constitutional amendment’s authorization of slot machines at certain pari-mutuel facilities in Miami-Dade and Broward Counties appears to create an implied limitation upon the Legislature’s ability to expand slot machine gaming to any additional locations including other locations within Broward and Miami-Dade Counties. The Florida Supreme Court has consistently invalidated legislative enactments that are contrary to or an enlargement of constitutional provisions. See State v. Volusia County School Building Authority, 60 So. 2d 761, 762 (Fla. 1952); see also Sebring Airport Authority v. McIntyre, 783 So. 2d 238 (Fla. 2001); see also Bush v. Holmes, 919 So. 2d 392 (Fla. 2006). While it was generally accepted that a constitutional provision is not necessary for authorization of slot machines, the presence of the 2004 constitutional authorization for certain facilities in Broward and Miami-Dade Counties serves as an apparent limitation on the power of the Legislature, prohibiting the authorization of slot machines at any other facilities within such counties. Authorization for slot machines may only be accomplished in the manner set forth in article X, section 23 of the Florida Constitution (1968) and the Legislature appears to be prohibited from expanding that authorization beyond the facilities specifically identified in the constitutional amendment.

**RUTLEDGE, ECENIA & PURNELL**

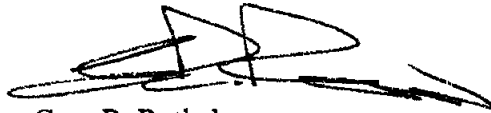
Honorable Jonah Wolfson

March 4, 2010

Page 3

Please contact me should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary R. Rutledge', with a long horizontal flourish extending to the right.

Gary R. Rutledge

cc: Jose Smith, Esq.  
Kevin Crowder