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FLORIDA'S GROWTH MANAGEMENT ODYSSEY: REVOLUTION, EVOLUTION, DEVOLUTION.....RESOLUTION

Robert M. Rhodes*

I have enjoyed reading Homer's epic poem *The Odyssey*. It is an allegory of struggle and perseverance that offers enduring insights and encouragement for anyone engaged in adventures and intellectual quests. I expect my friend Dr. Juergensmeyer has often identified with Odysseus' challenges over his 55 years of distinguished teaching and administration. I know I have.

An odyssey is a long, often difficult voyage or quest with many changes in fortune. It is an apt description of Florida's almost half century effort to manage its growth by enacting various state initiated legislation and related directives.

My goal is to relate the Florida story with special emphasis on what I consider its distinctive feature and the key institutional driver of its growth management program, the state's role.¹ Why focus on the state's role?

Balanced state policy and oversight are central to Florida's intergovernmental planning program. Policy establishes state goals that should be reflected in local planning and development decisions. Oversight provides the teeth, some call it the hammer or watch dog, for implementing and enforcing the state program. When properly articulated and applied, policy driven oversight can provide local government's policy context, sound process, tools and sometimes political cover and support to make difficult decisions. A state framework can also infuse a measure of uniformity into Florida's myriad of local land use planning programs.² It can provide a degree of desirable certainty that benefits all participants in planning decisions and enhances Florida's economic development prospects.³

Note I said a state program can accomplish these aims. Over the years, attainment has been irregular, primarily due to the philosophy and politics of the state leadership at the time and consequent budget and statutory policy.

To better understand Florida's odyssey, here is a snapshot history of our state and local planning program.⁴

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REVOLUTION

Florida has an enduring home rule tradition.⁵ True to this legacy, since the late 1960s Florida cities and counties enjoyed broad discretion to adopt local land use plans and regulations, and if they did, determine their character and legal status. But in the early '70s, facing a firestorm of environmental, infrastructure and other public service crises and a crushing number of new residents to the state, the Florida Legislature joined what Fred Bosselman and David Callies called "The Quiet Revolution in Land Use Controls."⁶ By joining the revolution, the state broke with tradition and recouped some of the power and discretion previously delegated to localities to plan and regulate land use.

The early '70s legislative products included the development of regional impact program, which required intergovernmental review of large-scale development and infrastructure projects that would impact the citizens of more than one county.⁷ An area of critical state concern program granted the state authority to impose state planning goals and local regulations on especially sensitive and threatened environmental resource areas.⁸ Later, a state appointed work group, the First Environmental Land Management Study Committee, known as ELMS I, took the lead in developing and the Legislature enacted the state's first mandatory local planning program, the 1975 Local Government Comprehensive Planning Act.⁹

The local planning act was an important milestone that poured a foundation for later legislation, but was not a startling success. Working with a broadly worded state mandate to produce local comprehensive plans with minimal state guidance, little technical and financial assistance, and no penalties for non-compliance, many local governments adopted loosely worded, internally inconsistent advisory plans. Future land use maps were optional and often too politically sensitive to produce. Although state policy required consistency between plans and development approvals, this policy was largely ignored.

As a result, the first planning act produced more local plans, but no meaningful statewide improvement in planning and growth management practice.

EVOLUTION

Concern in the early '80s about the ineffectiveness of the local planning act prompted appointment of the Second Environmental Land Management Study Committee to assess the state's growth management effort.

ELMS II concluded if Florida wants effective growth management, the state must take the lead, chart a policy course, and then effectively administer its programs. In short: the state must actively engage.¹⁰

The Governor and Legislature agreed with the bulk of ELMS II recommendations and legislation was enacted over a two year period that directed production of a state comprehensive policy plan and statutory guidelines for regional councils to develop regional policy plans.¹¹ These plans would pour the foundation in 1985 for the state's Local Government Comprehensive Planning and Development Regulation Act, known as the growth management act or GMA.¹² Among other action, the GMA called for the state to adopt minimum uniform standards for local plans and amendments which would be enforced through state compliance decisions; possible state sanctions for non-complying localities; an adequate public facilities policy that required certain services and facilities be available to serve new growth concurrent with the impacts of this growth, popularly called concurrency; a frequency limit for amendments to local plans; a requirement that plans be consistent with the state comprehensive plan and regional policy plans and implemented by local land development regulations; expansive public notice provisions for adoption of plans and amendments; and rights for citizens to challenge administratively state compliance decisions. The GMA also reaffirmed an earlier requirement that local development approvals be consistent with adopted local plans and provided certain citizens and groups a judicial remedy to enforce this consistency policy.

The GMA energized the state program and ultimately produced workable and moderately effective growth management. All local governments eventually adopted plans that were found in compliance with state standards.

During the late '80s and early '90s, first and second generation state growth management programs, DRIs and the GMA, were formidable statewide proscribers and prescribers for local plans and large projects. But not surprisingly, these major state intrusions on traditional local prerogative generated criticism and a measure of reproval from both urban and rural localities and some in the building industries. The state's urban sprawl policy, concurrency, which was never properly funded by state or local governments, a vague and unpredictable policy requiring an assessment of "need" and economic feasibility of new projects and the scope and extent of DRI exactions were special lightning rods for GMA opposition. This growing criticism, plus the fact the state program was relatively new and expected to evolve with experience prompted another major reassessment of Florida's state program by the Third Environmental Land Management Study Committee, ELMS III.

DEVOLUTION

Jerry Weitz describes several waves or stages in the development and evolution of state growth management programs.¹³ The fourth wave contemplates characteristics especially pertinent to Florida's more recent experience: erosion of early mandate driven state planning and regulatory programs, greater flexibility for localities to implement state programs and less rigid state application of uniform state rules, statutory and rule revisions without benefit of evaluation, and the ascendancy of greater intergovernmental cooperation and collaboration.¹⁴

True to the fourth wave, ELMS III concluded that because local governments had developed compliance plans and most had enacted implementing land development regulations, rigid adherence to uniform state standards and program mandates was not desirable or practical.¹⁵ The Legislature agreed and in the early '90s, the state's oversight role was loosened and certain small scale amendments were exempted from state review and ultimately phased out and urban areas were granted flexibility to apply state compliance standards to local plan amendments.

State oversight continued to be loosened in the 2000s. In 2007, the Legislature established a pilot alternative review project that fast tracked and streamlined state review of plan amendments in urban areas.¹⁶ The project cut review time in half and focused state review on issues of state and regional importance. In 2009, this alternative state review process was authorized statewide for plan amendments that would encourage urban redevelopment.¹⁷ Additionally, urban areas were granted flexibility to satisfy transportation concurrency and certain dense urban areas, comprising 51% of local governments, were exempted from DRI review.¹⁸

Building on earlier devolution waves, the tsunami of Weitz's prescient fourth wave hit Florida shores with adoption of the 2011 Community Planning Act (CPA).¹⁹ The act's overall purpose was to strengthen local government's role, processes and powers and to focus the state's role on protecting important state resources and facilities. Passage was fueled by concern the state program overreached and was bloated with stultifying processes that unnecessarily delayed decisions and produced unacceptable private sector costs. Against the backdrop of a severe economic downturn, these concerns attracted the attention of a new state administration intent on promoting economic development, producing new jobs, cutting back state regulations and a Legislature that shared similar goals. Executive branch champions and the bipartisan legislative coalition that had enacted and supported an energetic state growth management role was long gone

from the capitol. Additionally, the GMA had been amended regularly and accumulated irrelevant provisions that were ripe for review and possible revision.

Separately in 2011, to underscore the new administration's commitment to economic development, the Department of Community Affairs, the state land planning agency which administered the GMA, was abolished and the program moved into a division of the new Department of Economic Opportunity, the DEO.²⁰

Unlike prior major revisions to the state planning framework, the 2011 act was not the product of thorough, deliberate evaluation of program goals and results by a broad based group of knowledgeable members and informed by extensive public input. Instead, it was largely developed and promoted by a relatively small group of state officials and lobbyists with the strong support of a new state administration. Its enactment continues to generate controversy and strong sentiment. It has been praised as long overdue reform that simplified a complex, burdensome intergovernmental program and returns major planning responsibility and accountability to local government.²¹ It has also been excoriated as a wholesale retreat from sound planning practice that cuts the heart out of a reasonably effective program that did not require the major surgery it received.²²

There is some validity to both views, but I do not believe it is productive to re-fight the battles over the CPA's enactment; it is law and will be judged on its results. Moreover, and importantly, since its passage there has been no discernable interest in the executive and legislative branches to change course.

The most impactful and contentious part of the act is its effect on the state's oversight role.²³ The CPA retained a state oversight role, but it is markedly reduced. The 2011 act builds on the 2007 alternative review program and applies its expedited process to most proposed plan amendments. Under expedited review, DEO and other state and regional agencies may review and comment on proposed local plan amendments for any potential adverse impacts to important state resources or facilities. Review comments are limited to the subject area of each agency's jurisdiction. DEO may challenge a local action only if it determines there will be an adverse impact primarily based on received agency comments.²⁴ To date, DEO has not commented on any of these amendments.²⁵

Another review process, coordinated review, provides more expansive state compliance review and applies to larger scale amendments and required local plan updates. Like expedited review, coordinated review considers agency comments on potential adverse impacts to important state resources and facilities. It also may consider various statutory planning policies applicable to proposed

local plan amendments.²⁶ DEO may issue objections, recommendations and comments and find a proposed amendment not in compliance with state law if an amendment may adversely impact an important state resource or facility.

Since enactment of the 2011 act, DEO has reviewed thousands of proposed local amendments; it has found four proposed amendments not in compliance with state standards.²⁷ The agency initiated a formal noncompliance proceeding in one case and all four cases were resolved through negotiation.²⁸

DEO's implementation of the CPA to date reflects a strong desire to largely defer to local government planning decisions and responsibility and to amicably resolve and accommodate any differences with local decisions. This track record implements a priority of the past administration to minimize state regulations and the administrative reality that the state planning program now is housed in a department primarily dedicated to promoting its eponymous economic opportunity mission. It also evidences a key characteristic of Weitz's fourth wave, enhanced intergovernmental collaboration. In sum, accommodating oversight plus 2011 CPA amendments that devolved more authority to local government are clearly accomplishing prime CPA goals to strengthen local governments' role and power vis-a-vis the state, grant localities more implementation flexibility, and expedite review and adoption of proposed plan amendments.

But what about the CPA's other major goal, protecting important state resources and facilities against adverse impacts? To be clear, I believe this focused state role is appropriate and provides the policy driver, foundation and the core justification for state compliance oversight. However, effective oversight is hampered and diluted by key CPA provisions. I will address two of these provisions.

First, the CPA's fundamental terms, important state resources and facilities are not statutorily defined and DEO is not authorized to define or refine these expansive terms by rule. Instead, for every proposed local plan amendment, up to ten state and regional government agencies may review the amendment and in the context of their statutory jurisdiction may determine what is an important state resource and facility and whether the amendment would adversely impact them.²⁹ This entirely subjective, ad hoc identification and assessment policy favors no one. Plan amendment applicants, local governments, and interested citizens are all left to divine the situational preferences of the many reviewers; there are no reliable rules for engagement.³⁰ Regulatory unpredictability is exacerbated by the reality that review agency policy preferences and interest in the program can be expected to change materially as state officers, governing body members and agency personnel cycle in and out of government. Lacking

established substantive benchmarks, state executive officers and the Legislature cannot appraise results and determine if the CPA's seminal policies are being achieved, and the courts, when asked to do so, cannot determine if state action comports with legislative intent. Further, this open ended identification process is legally fraught and vulnerable to constitutional and administrative law challenges.³¹

RESOLUTION

The state requires local government to provide “meaningful, predictable planning standards for use and development of land.”³² It should apply this same standard to its central oversight responsibility and amend the CPA accordingly. Specifically, the Legislature should define the key terms and direct DEO to refine the statutory definition and develop a rule that will particularly identify important state resources and facilities.

The rule need not be exhaustive. A premium should be placed on identifying resources and facilities that have compelling statewide importance. A first step is to review state and regional review agency comments on prior proposed amendments. This should be followed by an assessment of the scope and effectiveness of current federal, state and regional planning, regulatory permitting, funding and land purchase programs that could help identify possible gaps the CPA land use focus can fill or a state interest it can complement and promote.³³ For example, resources could include certain environmentally rich and vulnerable areas that are presently regulated by permits or subject to general CPA directives but would benefit from greater state oversight of local plan land use decisions. A priority should be coastal and riverine areas that are or are reasonably expected to be impacted by sea level rise.³⁴ Another guidepost could recognize state investments in resources and facilities, such as the state's significant financial contributions to cleaning Lake Okeechobee and restoring the Everglades,³⁵ and the effective functioning of facilities, such as major state funded highways and interchanges.

The rule should be adopted by the Governor and the elected state cabinet and be subject to legislative review and approval at the next legislative session following rule adoption.³⁶ It's time to do this. DEO has administered the CPA since 2011. It has processed thousands of proposed local plan amendments. This experience can provide a solid foundation for guidance that would direct, focus and circumscribe the state's oversight role and provide a measure of consistent implementation and regulatory certainty for all participants in the plan review process.

Next, recall the state may find a proposed plan amendment not in compliance with statutory standards. What happens if a local government disputes a state compliance finding? If the challenge goes to hearing, the state carries a heavy burden. To prevail, it must show by clear and convincing evidence that its determination is correct.³⁷ Clear and convincing means a finding can be made with “a firm belief or conviction without hesitation about the matter in issue.”³⁸ This is a much higher bar than the competent substantial evidence standard that applies in Florida to almost all other administrative proceedings.³⁹

Why such a high bar for the state, especially in situations that call for a subjective policy judgment without the benefit of definitive substantive guidelines? Clear and convincing is not an appropriate standard in this context. Moreover, it is a major disincentive for the state to perform its compliance oversight role. The playing field should be evened; competent substantial evidence is the right test when governments cannot agree and the CPA should be amended accordingly.

CODA

Prior sustained executive branch and legislative efforts to reduce state oversight and grant local governments more flexibility and discretion to manage their growth culminated with passage of the CPA. The 2011 act is directionally correct; the GMA was overdue for revision and a refocus of the state’s oversight role on important state planning interests. However, the failure to define the core CPA terms that form the basis for state review plus a very difficult standard for state enforcement of its compliance decisions have significantly weakened the state’s ability to perform its primary substantive role in the planning program, oversight.⁴⁰

If the state desires to retain an oversight role it should be meaningful and must clearly identify the important state interests that justify state involvement in local planning and development regulation decisions. If not, the CPA compliance effort will continue to be viewed by many as a box checking exercise that simply delays the effective date of locally approved plan amendments. This is a wasteful use of public and private resources. Moreover, weak state engagement and oversight will invite new efforts by growth management opponents to undermine the remaining salient provisions of the act and to question the overall relevance of a state oversight role.⁴¹

To paraphrase the ELMS II report, the state must reengage. State leadership is necessary for Florida to address the many planning issues of state importance that relentless growth continues to impose on already stressed

facilities and natural resources, including current and future deleterious effects of sea level rise on our peninsular state. As part of this effort, the CPA should be revised to produce clear guidelines to enable consistent administration by government, provide performance direction for citizens, and establish standards to assess program achievement for all parties, the Legislature and the courts.

Florida's Odyssean state planning program provides a several decades case study of an almost continuous intergovernmental battle for power to regulate land development. It merits consideration by any state seeking to sustain or join "the quiet revolution in land use controls. " The program has experienced revolution, evolution and devolution; it's time for resolution that will provide a stable, sustainable program. The odyssey continues.

ENDNOTES

1. A comprehensive history of Florida's planning and growth management programs is Richard G. Rubino & Earl M. Starnes, *Lessons Learned? The History of Planning in Florida* (2008).
2. 67 counties, 413 cities and certain special districts are subject to the requirements of the state planning act.
3. The significance of regulatory predictability to enhance economic development opportunity for the state and localities is highlighted in The Florida Council of 100, *Project Sunrise: an economic competitiveness strategy for the State of Florida*, 67 (2018).
4. The Florida Department of Economic Opportunity Division of Community Planning has compiled a history of all major community planning legislation and amendments from 1986—2018, www.floridajobs.org/docs/community-development/comp-plan/stat.
5. In a case that invalidated the statutory standards for designating areas of critical state concern, Florida's First District Court of Appeal noted: "the primacy of local government jurisdiction in land development regulation" which reflects "historical preference" and is "a corollary of the people's right to access government." "Cross Key Waterways v. Askew, 352 So.2nd 1052, 1053 (Fla. 1st DCA 1977), aff'd Askew v. Cross Key Waterways, 372 So.2nd 913 (1978).
6. Fred Bosselman & David Callies, *The Quiet Revolution in Land Use Control*, 1971.
7. Laws of Florida, ch. 72-317, sec. 6.
8. Laws of Florida ch. 72-317, sec. 5.
9. Laws of Florida ch. 75-257.
10. State of Florida, *Final Report of the Second Environmental Land Management Study Committee*, 1984.
11. Robert M. Rhodes & Robert C. Apgar, "Charting Florida's Course: the 1984 State and Regional Planning Act," 12 Fla. St. U. L. Rev. 583 (1984). Florida's checkered history developing state and regional plans to manage its growth and natural resources is addressed extensively in Rubino and Starnes, supra note 1.

12. Laws of Florida, ch. 85-55. For documentation of the legislative history and major provisions of the GMA, see Thomas G. Pelham, William L. Hyde, and Robert P. Banks, *Managing Florida's Growth Toward an Integrated State, Regional and Local Comprehensive Planning Process*, " 13 Fla. St. U. L. Rev. 515 (1985).
13. Jerry Weitz, *Sprawl Busting*, American Planning Association Planners Press, 1999.
14. *Id.*, 328-329.
15. State of Florida, *Report of the Third Environmental Land Management Study Committee*, 1992. For a summary of the Committee's work, David Powell, *Managing Florida's Growth: The Next Generation*," Fla. St. U. L. Rev. 229 (1993). The ELMS III recommendations were included in Laws of Florida, ch. 93-206.
16. Laws of Florida, ch. 2007-204, sec. 13.
17. Laws of Florida, ch. 2009-96, sec. 9.
18. *Id.*, sec. 4 (transportation concurrency) and sections 2 and 12 (dense urban land areas).
19. Laws of Florida, ch. 2011-139.
20. Laws of Florida, ch. 2011-142, sec. 13.
21. See Linda Loomis Shelley & Karen Brodeen, *Home Rule Redux: The Community Planning Act of 2011*, 85 Fla. B.J. 49 (July/August 2011). A recurring theme of advocates for the bill that became the CPA was "let local government be local government" which reflects the Florida First District Court of Appeal 's observation in Askew v. Cross Key Waterways concerning "the primacy of local government jurisdiction in land development regulation. " supra, note 5.
22. See Tom Pelham, *Florida's Retreat From Planning and Growth Management*, American Planning Association, 9 Practicing Planner No.4; Nancy Stroud, *A History and New Turns in Florida's Growth Management Program*, 45 J. Marshall L. Rev. 397 (2012). See also Julian Conrad Juergensmeyer, Thomas E. Roberts, Patricia E. Salkin and Ryan Max Rowberry, *Land Use Planning and Development Regulation Law* 381, (4th ed. 2018), in which the authors comment that the 2011 CPA "virtually gutted the Florida growth management system. "

23. My focus on the state's oversight role does not diminish the significance and effect of additional, consequential CPA amendments that loosened or repealed GMA provisions. Per the 2011 Act, transportation, parks and recreation and school concurrency are no longer mandates but remain local options. The frequency restriction on local plan amendments was repealed. Also repealed were policies that required plan amendments to be financially feasible and based on demonstrated need. Anti-sprawl provisions were made less stringent and third party challenges to plan amendments were made more difficult to win by subjecting the challenges to a fairly debatable test. The remaining DRI program was terminated and DRI scale projects were required to undergo requisite CPA review only if the proposed project is inconsistent with an adopted local plan.

24. DEO has primary responsibility to review potential impacts to affordable housing, coastal high hazard areas and military installations. .

25. Data gleaned from DEO's website, www.floridajobs.org/docs/community-development/communityplanning and data provided the author by DEO. Interpretation of the data is solely the author's.

26. The CPA repealed state rule 9J-5, F.A.C., which provided minimum standards for state review of local amendments for compliance with state standards. Some of the former rule's planning provisions are included in various parts of the CPA. The 2011 Act also provided that the legislatively adopted state comprehensive plan, Fla. Stat. ch. 187, will no longer be considered a factor in compliance review. See the definition of "in compliance" which no longer includes consistency with the state comprehensive plan. Fla. Stat. sec. 3184(1)(b)(2019).

27. Supra, note 25.

28. Id.

29. Fla. Stat. sec. 163.3184(1)(c) (2019), defining "reviewing agencies."

30. In an effort to infuse a measure of predictability into the local government land use decision process, Laws of Florida, ch. 2019-165, sec. 2, codified at Fla. Stat. sec. 125.022 (counties) and sec. 8, codified at Fla. Stat. sec. 166.033 (cities) provide time frames for local government action on applications for development orders and permits .

31. Robert M. Rhodes, "*The 2011 Community Planning Act: Certain Change, Uncertain Reform.*" 34 ELULS Reporter 1, 18, June 2013.

32. Fla. Stat. sec. 163.3177(1)(g)(10)(2019).

33. Land use approvals and regulatory permitting often are conflated and lumped together as entitlements. Generally, land use approval will precede regulatory permitting. The initial, salient decision whether land may be used for particular uses will consider the principles and provisions of a local plan and in some instances consistency with the plan. Once approval to use the land is obtained, regulatory permitting insures project impacts are satisfactorily addressed and site integrity maintained.

34. The CPA generally directs localities to plan for sea level rise and specifically authorizes but does not require localities to designate adaptation action areas for coastal areas that experience flooding and are vulnerable to sea level rise impacts. Fla. Stat. secs. 163.3164(1), 163.3177(6)(g)10, and 163.3178 (2019). However, DEO currently lacks authority to adopt substantive standards to assess local performance and compliance with state law.

35. Governor Ron DeSantis' Executive Order 19-12 directs state and regional agencies to give these actions priority.

36. For context, the first DRI standards were approved by the Legislature and later amendments subject to legislative approval. Fla. Stat. sec. 380.10(2). (1977). Additionally, the effectiveness of the state rule establishing minimum criteria for review of local plans and amendments, Fla. Admin. Code Rule 9J-5, was conditioned on legislative review, rejection, modification or no action. In Askev v Cross Key Waterways, 372 So. 2nd 913, 925 (1978), the Florida Supreme Court commented favorably on legislative approval of the DRI administrative standards prior to their effectiveness in contrast to the statutory standards applicable to areas of critical state concern, which the court invalidated. The legislature subsequently required an administrative rule designating an area of critical state concern to be submitted to the Legislature which may reject, modify or take no action on the rule. Fla. Stat. sec. 380.05(1)(c)(2019).

37. Fla. Stat. sec. 163.3184(5)(c)(2019).

38. Florida Supreme Court, *Florida Standard Jury Instructions*, sec. 411.3.

39. Regarding application of the competent substantial evidence standard in state administrative proceedings, see Fla. Stat. sec. 120.57 (1)(l) and in regard to appeals of final state agency action, Fla. Stat. sec. 120.68(7)(b)(2019). For application of the standard in local land use proceedings, see <https://floridaldrs/2011/07/08> and generally Gary K. Hunter and Douglas M.

Smith, “*ABCs of Local Land Use and Zoning Decisions*, “ 84 Fla. B.J. 20, Jan. 2010.

40. Although the state’s role has been diminished, major parts of the state planning program remain. Local plans and amendments must be proposed, considered, reviewed and may be challenged pursuant to statutory process. Citizens are offered liberal opportunities and public notice to participate in local government decisions. Development approvals and required land development regulations must be consistent with an adopted local plan; the plan is still the primary planning document and enjoys legal status. The state and a broad range of affected citizens may challenge local action to adopt plans and amendments for non-compliance with state standards. Local development approvals may be challenged judicially as inconsistent with an adopted local plan. And although no longer mandated, localities may continue to apply adequate public facility, concurrency, policies to mitigated transportation, parks and recreation and school impacts.

41. For example, Laws of Florida, ch. 2019-165, sec. 7, codified at Fla. Stat. sec. 163.3215(8)(c)(2019), provides a prevailing party in a judicial challenge to a development approval as inconsistent with a local plan is entitled to attorney fees and costs. This act will likely discourage frivolous and ill-intentioned citizen suits, but also will likely significantly dilute the effectiveness of this singular citizen enforcement remedy. 1000 Friends of Florida, a leading smart growth advocacy organization, strongly opposed this legislation and observed it will sound “the death knell” for enforcement of the CPA. www.1000friendsofflorida.org, 2019 Legislative Wrap Up: “HB 7103 Signed into Law.” 1000 Friends of Florida has filed suit to invalidate the mandatory prevailing party attorney fees and costs provision. 1000 Friends of Florida v. State of Florida, 2019-CA002215 (Fl. 2nd Cir.).