

Charlotte County, Florida 2019 Federal Legislative Agenda





**Prepared by Thorn Run Partners for the
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Water Resources and Environment

National Flood Insurance Program

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Support efforts to improve the National Flood Insurance Program for the benefit of all participants.

Water Quality and Red Tide

9

Support research and monitoring programs to address red tide. *Support* efforts to improve water quality for all water entering the Gulf of Mexico, including from the coast of Florida and other tributaries, such as the Mississippi River.

Shoreline and Inlet Management

10

Support adequate annual funding for the Corps of Engineers Investigations account, including additional funding specifically for “shore protection” studies not identified in the annual Administration budget. *Support* initiation of a Corps of Engineers General Reevaluation or other report of the Manasota Key shoreline via the Corps of Engineers disaster supplemental or annual Work Plan, focusing primarily on those areas recommended for a project in 1981 to address sediment management and erosion of beaches, and to provide for safer navigation.

Charlotte Harbor Conservation; Central Sewers

12

Support efforts to secure funding for Charlotte County sewer system expansion. *Support* amending existing Charlotte County water infrastructure authorization via the Water Resources Development Act to allow \$30,000,000 for the Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.

Everglades Restoration

14

Support adequate funding for Everglades restoration. *Support* continuing implementation of all facets of Everglades restoration, including: funding continued work on the Central Everglades Planning Project, full funding for the restoration of the Herbert Hoover Dike, and continued funding for the Tamiami Trail bridging project to send more water south and reduce the need for discharges from Lake Okeechobee during wet periods. *Monitor* the effort of the Army Corps of Engineers to update the Lake Okeechobee System Operating Manual.

RESTORE Act

16

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 funding to be available.

Waters of the United States and Regulatory Relief

18

Monitor activity related to the implementation of the Waters of the U.S. rule. *Oppose* aspects of the proposed rule that would negatively affect Charlotte County.

Energy Exploration

19

Oppose the potential expansion of energy exploration in Florida.

Endangered Species Act and Regulatory Reforms

21

Support efforts to streamline the Endangered Species Act and increase cooperation with state and local authorities. *Support* efforts to further regulatory reform, including with respect to transportation projects which receive less than \$5 million in federal investment.



Transportation

Infrastructure Investment 23

Support new federal investment in infrastructure. *Support* all opportunities to secure funding for Charlotte County’s infrastructure priorities.

Federal Aviation Administration Authorization 24

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.

Transportation Authorization 25

Monitor proposed changes to federal highway programs. *Support* the passage of a long-term surface transportation reauthorization bill. *Support* sufficient funding for transportation infrastructure projects of importance to the County.

Economic Development & Social Services

Opioid Addiction 26

Support appropriations activities to fund programs in CARA, the 21st Century Cures Act or other programs to address the opioid crisis. *Monitor* HHS for guidance regarding the allocation of 21st Century Cures state formula funding. *Support* attempts by entities within Charlotte County to secure funding to fight opioid addiction.

Healthcare Reform 28

Monitor efforts to repeal/replace or amend the Affordable Care Act. *Monitor* changes to Medicaid and Medicare. *Support* the repeal of the excise tax on high-cost health insurance plans (a.k.a. the Cadillac tax) within the Affordable Care Act.

Medical Marijuana 30

Support legislation to prevent federal interference with Florida’s medical marijuana program.

Community Services Block Grants & the Low Income Home Energy Program 31

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 32

Monitor implementation of the Department of Housing and Urban Development’s Assessment of Fair Housing Rule.

Economic Development 33

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. *Monitor* Opportunity Zone regulations to help Charlotte County gain as much benefit as possible from development in their three Opportunity Zones-designated Census tracts.



Local Government Issues

Federal Emergency Management Agency Disaster Assistance 35

Monitor implementation of the legislation to prohibit the Federal Emergency Management Agency from de-obligating previously awarded disaster funds for projects that have been certified as complete by the state for at least three years.

Domestic Discretionary Spending Pressure 36

Monitor proposed cuts to non-defense discretionary programs of importance to Charlotte County.

Website Compliance with the Americans with Disabilities Act 37

Support the issuance of guidance from the Department of Justice to provide objective standards for website to be in compliance with the Americans with Disabilities Act. *Monitor* legislation that impacts the Americans with Disabilities Act.

Transient Occupancy Taxes 38

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 39

Oppose legislation that would threaten the tax exemption on state and local bonds. *Support* the passage of legislation to again allow for advanced refunding of tax-exempt 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 \$20.5 billion in debt due to large storms.

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 impacted 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 at the end of May 2019.

In Charlotte County, there are 36,516 NFIP policies for both homes and commercial properties.

116th Congressional Approach

In early March, the House Financial Services Committee introduced four draft bills to reauthorize the program, address mitigation and mapping, provide claim reforms, and make administrative reforms, among other things. These bills, along with potentially others, will likely make up the bulk of the House Majority approach to reauthorizing the NFIP.

Administrative Provisions

- Extends the life of the NFIP for 5-plus years, to the end of September 2024
- Forgives the debt of the NFIP, which is estimated to be roughly \$20.5 billion
- Increases coverage limits
 - For residential properties from \$250,000 to \$500,000
 - For commercial properties from \$500,000 to \$1.5 million
- Allows for voluntary, community-wide flood insurance policies that would cover all properties within a community

Affordability Provisions

- Creates a demonstration program for policy affordability to demonstrate the effectiveness of providing means-tested discounted rates for flood insurance coverage
 - 1- to 4-family residential properties are eligible
 - Must be primary residences



- Household income may not exceed 80 of the area median income
- Chargeable premium rate shall be equal to 2 percent of annual area median income
- Program must be created within 12 months of passage of the law
- Repeals the Federal Policy Fee
 - \$25 per residential, primary home policy
 - \$250 per non-primary, commercial, or other property

Mitigation Provisions

- Authorizes \$2 billion for FEMA's Pre-Disaster Mitigation Program
- Creates a state revolving loan fund for flood mitigation projects, similar to the Clean Water or Drinking Water State Revolving Loan Funds
 - Allows states to use federal funding to capitalize a loan program that would provide funding for flood mitigation activities to homeowners, businesses, and non-profits that are eligible to participate in the NFIP and to local governments that participate in the NFIP.
 - Assistance must go to projects in the 500-year floodplain, areas of residual risk, or other areas at the discretion of the Administrator. Allows funding for projects outside the 500-year floodplain that address repetitive loss and severe repetitive loss properties.
 - Allows assistance to be given for the following types of mitigation projects:
 - Elevation
 - Floodproofing
 - Relocation of homes
 - Environmental restoration, like stormwater management, that reduces flood risk
 - Mitigation activities authorized under NFIP's Flood Mitigation Assistance program
 - Allows a state to use up to 30% of its funding to provide additional subsidization to low-income geographic areas or homeowners, including forgiveness of loan principal
- Expands the Increased Cost of Compliance Program so policyholders can use the loans for *pre-disaster* mitigation improvements
 - Allows for up to \$60,000 in loans
- Provides for lower premium rates if:
 - Flood risk mitigation activities are undertaken on a block or neighborhood scale in dense urban environments
 - Mechanical systems are elevated
 - This is in addition to currently-acknowledged mitigation efforts that reduce flood insurance premiums
- Authorizes grants for Community Rating System Program Coordinators in an effort to expand their use

Mapping Provisions

- Mandates that when updating maps, FEMA must consider future flood risk, i.e. sea level rise and climate change impacts.
- Includes provisions to attempt to create a central clearing house of mapping, elevation, and other risk data to also include mitigation opportunities so policyholders can use such information to make informed decisions regarding flood risk, mitigation opportunities, and future flood insurance premiums.

Charlotte County Position

Charlotte County supports reauthorization of the National Flood Insurance Program (NFIP) with legislative, policy and programmatic modifications to improve the affordability and transparency of the program through reforms in the following areas:

- 1) Affordability/Rate Structure



- a. Maintain a focus on affordability; however, if rates must rise, provide a more reasonable glide path for all properties
 - b. Ensure rates are consistent for all properties, including second homes and businesses
 - c. Ensure NFIP rates are not excessive or unfair by making the rate-setting process more transparent to the public
- 2) Programmatic Modifications to Enhance NFIP's Financial Sustainability
- a. Consider Write-Your-Own reforms including reducing commissions while further incentivizing NFIP policy sales efforts
 - b. Encourage greater participation by those outside of the 100-year floodplain via expanded use of the Preferred Risk Policy
 - c. Further strengthen enforcement responsibilities to ensure those in the 100-year floodplain have and maintain flood insurance
 - d. Privatization that maintains affordability and requires whole profile of risk (no cherry picking)
- 3) Mitigation
- a. Increase funding for existing flood mitigation programs
 - b. Establish tax credits for mitigation efforts
 - c. Consider voucher/loan programs to further emphasize mitigation, particularly for lower-income participants

POSITION: *Support* efforts to improve the National Flood Insurance Program for the benefit of all participants.



FEDERAL ISSUE: Water Quality and Red Tide

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2018, Charlotte County and much of the southern Gulf Coast of Florida were impacted by significant levels of the algae *Karenia Brevis*, commonly known as red tide. Outbreaks of red tide off the Florida coast have been documented since Spanish explorers first began visiting the area in the 15th century, however, a 2007 study that was conducted by the University of Miami and funded by the National Institutes of Health found that the levels of red tide have significantly increased over the past fifty years. The study found that levels of red tide measured in the area from Tampa Bay to Sanibel Island between 1994 and 2002 is thirteen to eighteen times the levels measured between 1954 and 1963. The increase in the nutrient levels in the ecosystem was found to be a significant factor in this increase.

In reaction to the 2018 outbreaks of red tide, both the state and federal government have taken action to mitigate the impacts to the local ecosystem and economy. On the federal level, the Small Business Administration (SBA) opened several recovery centers to assist small businesses impacted by red tide. The National Oceanic and Atmospheric Administration (NOAA) also implemented several research and monitoring programs to track the algae. Members of the Florida delegation, particularly Representative Francis Rooney, called on the President to declare a state of emergency as a result of the outbreak, however this request was not fulfilled. During the FY 2019 appropriations process, \$1 million was allocated to the Centers for Disease Control to study, mitigate and respond to harmful algal blooms. Senator Rubio and former Senator Nelson also worked to include several other provisions in the Commerce, Justice and Science appropriations bill and the Interior and Environment appropriations bill to address harmful algal blooms.

The water quality in the Gulf of Mexico also affects the water near the shores of Charlotte County. Other sources of nutrients and pollution, such as the Mississippi River delta also contribute to the overall ecosystem in the Gulf. The Mississippi River watershed stretches north into Canada, west to Montana, Wyoming, Colorado and New Mexico and east to North Carolina, West Virginia and Pennsylvania. This broad drainage basin creates challenges for determining and addressing causes of pollution that enters the Gulf of Mexico.

POSITION: **Support** research and monitoring programs to address red tide. **Support** efforts to improve water quality for all water entering the Gulf of Mexico, including from the coast of Florida and other tributaries, such as the Mississippi River.



FEDERAL ISSUE: Shoreline and Inlet Management

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Manasota Key

Over the past several years, highlighted most recently by Hurricane Irma, Charlotte County's beaches on Manasota Key have eroded to the point where the County has declared numerous emergencies to help with permitting and other homeowner challenges.

In 2016, upon seeking to engage the Corps of Engineers in a long-term solution to erosion issues, the County learned that the Corps completed a Chief of Engineers report on 29 June 1981 in response to a House Public Works Committee Resolution adopted 2 December 1971. Unfortunately, in the spring of 1981, the Charlotte County Board of County Commissioners withdrew support for the project, thereby effectively ending substantive work on the project.

Given the County's recent challenges and the work completed by the Corps in the past, the County requests that the Corps initiate a General Reevaluation or other report of the shoreline, focusing primarily on those areas recommended for a project in 1981. These include beach erosion control improvements along 3.9 miles beginning at Stump Pass and extending northward to the Sarasota County Line (along Manasota Key), including the Port Charlotte Beach State Recreational Area. At the time, the project had a benefit-cost ratio of 4.2, with initial placement of approximately 335,000 cubic yards (CY) and five-year nourishment intervals of approximately 68,000 CY each. Finally, a 1,250-foot long terminal groin was recommended to be constructed at the south end of the beach fill along Stump Pass. Sand was proposed to have come from an offshore borrow area.

To fund beach nourishment projects and studies that are generally not budgeted for by the Administration, Congress has appropriated additional funding for what Congress terms "Additional Funding for Ongoing Work." Manasota Key was not funded in the FY 2019 Work Plan or as part of the supplemental appropriations Work Plan allocating funds appropriated by Congress for disaster recovery and risk reduction studies and projects.

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, extending southward 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 placed 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.

POSITION: *Support* adequate annual funding for the Corps of Engineers Investigations account, including additional funding specifically for "shore protection" studies not identified in the annual Administration budget. *Support* initiation of a Corps of Engineers General Reevaluation or other report of the Manasota Key shoreline via the Corps of Engineers disaster supplemental or annual Work Plan, focusing primarily on those areas recommended for a project in 1981 to address sediment management and erosion of beaches, and to provide for safer navigation.



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. Additionally, the project is included in the State Expenditure Plan developed by the Gulf Consortium for the Spill Impact Component.

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.

In the Senate version of the 2018 WRDA, S. 2800, the Charlotte County request was included in Section 2203, entitled *Environmental Infrastructure Projects*. Unfortunately, the provision, similar to others like it, was not included in the final WRDA bill approved by Congress.



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.

POSITION: **Support** efforts to secure funding for Charlotte County sewer system expansion. **Support** amending existing Charlotte County water infrastructure authorization via the Water Resources Development Act to allow \$30,000,000 for the Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.



FEDERAL ISSUE: Everglades Restoration

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2000, Congress authorized a 30-year plan, termed the Comprehensive Everglades Restoration Plan (CERP), for the restoration of the Everglades ecosystem in southern Florida. CERP generally focuses on increasing the storage of excess water in the rainy season to provide more water during the dry season for the ecosystem and for urban and agricultural users. When originally authorized, it was estimated that CERP would cost a total of \$8.2 billion and take approximately 30 years to complete. More recent estimates indicate the plan may take 50 years to implement and could cost \$13.5 billion.

The construction of water control structures and facilities within the Everglades throughout the 20th century has altered the natural hydrologic patterns of water in the region. Over time, this has changed the ecosystem of the connected coastal regions.

There are a number of projects and studies under various stages of development that are expected to improve water quality and flow in the Everglades and surrounding areas as well as reduce harmful discharges to the east and west coasts of Florida.

- The South Florida Water Management District secured a post-authorization change report to increase water storage south of Lake Okeechobee by constructing a reservoir in the Everglades Agricultural Area (EAA) which was authorized in the 2018 WRDA bill. Funding for the Planning, Engineering and Design phase of the project has yet to be requested by the Administration or provided via the Corps in one of their annual Work Plans. The next opportunity for funding will come in the Fiscal Year 2020 appropriations process.
- The Central Everglades Planning Project (CEPP) received its Corps of Engineers Chief's Report in 2015 and was authorized in the 2016 version of the Water Resources Development Act, included in another, larger piece of legislation. CEPP seeks to remove barriers to flow in the central Everglades to put the "river" back into the "River of Grass." CEPP, once fully constructed, is estimated to bring an average of 200,000 acre-feet of additional water from Lake Okeechobee into the Central Everglades each year. This is expected to reduce damaging discharges to the east and west coast estuaries while returning more flow to the Everglades. Federal components of CEPP are expected to be under construction by 2022 with completion expected in 2030.
- The overall purpose of the Modified Waters Delivery (MWD) to Everglades National Park (ENP) project is to restore the natural hydrologic conditions in ENP, which was altered by the construction of roads, levees, and canals. There are four major components of MWD: 8.5 Square Mile Area Flood mitigation, Tamiami Trail Modifications, Conveyance and Seepage Control Features, and Combined Operation Plan. All four components are necessary to provide substantial flow increases to ENP.
 - The most well-known portion of this project is the bridging of the Tamiami Trail. A one-mile bridge has been completed to date. In early 2015, the Department of Interior released a preferred alternative to bridge an additional 5.5 miles of the Trail called the Tamiami Trail: Next Steps project. The additional bridging will provide unconstrained flows of water to Northeast Shark River Slough (NESRS) in ENP. The resulting increased water volumes and improved flow distribution are expected to promote conditions conducive to the survival of myriad species of fish and wildlife. Groundbreaking for 2.6 of the 5.5 miles yet to be finished occurred in 2016.
 - Flood mitigation work to protect a residential area near the project (the 8.5 Square Mile Area) was completed in 2016.



Lake Okeechobee System Operating Manual Update

The Army Corps of Engineers has begun the process to update the Lake Okeechobee Regulation Schedule to reflect new infrastructure that has or will be coming online (such as the Herbert Hoover Dike rehabilitation). The regulation schedule regulates the management of lake levels. As a part of this process, the Corps hosted several public meetings in Florida in February and will accept written comments through the end of March. The Corps anticipates having a final report completed in September of 2022.

POSITION: *Support* adequate funding for Everglades restoration. *Support* continuing implementation of all facets of Everglades restoration, including: funding continued work on the Central Everglades Planning Project, full funding for the restoration of the Herbert Hoover Dike, and continued funding for the Tamiami Trail bridging project to send more water south and reduce the need for discharges from Lake Okeechobee during wet periods. *Monitor* the effort of the Army Corps of Engineers to update the Lake Okeechobee System Operating Manual.



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 millions of barrels of oil spilling into the Gulf of Mexico.

In the summer of 2012, Congress passed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) Act, which established the Gulf Coast Restoration Trust Fund and mandated that 80 percent of Clean Water Act (CWA) civil damages from the parties involved in the spill be allocated directly to the five impacted states, including Florida.

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.

In July 2015, BP and DOJ reached a settlement for all federal and state claims in which BP will pay \$5.5 billion in CWA fines. BP will also pay \$4.9 billion in economic claims to the Gulf states, including \$2 billion to Florida; \$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 three channels created by the RESTORE Act: Direct Component, Council-selected projects, and the Spill Impact Component. 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.

Separately, in 2013, DOJ settled with Transocean for their role in the Deepwater Horizon spill. As a result of the agreement, Transocean paid \$1 billion in CWA fines, resulting in the first allocation of funding to be distributed via the RESTORE Act.

Direct Component (Bucket 1)

The Direct Component portion makes up roughly 35 percent of the total Trust Fund and is equally divided among the five Gulf States. The RESTORE Act grants states with significant discretion as to how they will use the funding for restoration activities. In Florida, these funds are then distributed to the 23 Gulf Coast counties. The “disproportionally affected” counties receive 75 percent of the state’s share with the remaining 25 percent divided among the other 15 counties, including Charlotte, based on a formula that takes into account population, distance from the spill and average tax collection per capita. Charlotte County has developed a multi-year implementation plan (MYIP), which was submitted to and approved by Treasury in 2016. The County has now received four grant awards for projects included in the MYIP.

Council-selected Projects (Bucket 2)

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. The Council is projected to receive approximately \$1.6 billion for Council-selected projects as a result of the settlements with BP, Transocean and Anadarko.

Project and program requests for initial funding from the Transocean settlement under the Council's Comprehensive Plan were due in late 2014. In December of 2015, the Council approved the Initial Funded Priorities List (FPL). The FPL funds approximately \$156.6 million in restoration activities and prioritizes 12 additional projects in the future, subject to further environmental and Council review. The Council also reserved \$26.6 million for a future round of funding, which will be subject to a public process.

In December of 2016, the Council adopted an update to its Comprehensive Plan, which included a Ten-Year Funding Strategy for Gulf restoration. The Ten-Year Strategy does not identify specific programs or projects, but does anticipate that the next FPL will have a three-year development period, with all future FPLs also operating on a three-year schedule. According to the update, spacing out FPLs will allow the Council to include much larger projects and programs in future FPLs, as well as explore alternative financing mechanisms, such as public-private partnerships, to support these large-scale projects. This summer, the Council released a Funded Priorities List for Planning purposes, in line with their adopted Comprehensive Plan. This FPL will allow each of the eleven Council members to apply for up to \$500,000 a year for three years and an additional \$300,000 for two additional years for planning, staffing, public engagement and other necessary activities prior to the start of a project. The funding cannot be used for engineering, design and environmental work for projects that are beyond the pre-submission stage. This funding represents just under 1.5% of the total funds available in Bucket 2. The Florida Department of Environmental Protection has been awarded just under \$2.1 million. FDEP plans to use the funding to create a long term workplan that leverages the RESTORE Act dollars and to increase public and stakeholder participation.

Spill Impact Component (Bucket 3)

In Florida, the Spill Impact Component is administered by the Gulf Consortium. The Gulf Consortium was created by interlocal agreement in 2012 and has been meeting since that time. The Board of Directors consists of representatives from each of the 23 Gulf Coast counties, including Charlotte, and six appointments made by the Governor. The Gulf Consortium was tasked with drafting a State Expenditure Plan (SEP) to be submitted to the Council by the Governor for approval. The Consortium has agreed to divide their allocation up evenly between the counties in the plan that was approved by the Council in October. This will result in an allocation for Charlotte of just under \$12.5 million. The SEP includes Charlotte County's Charlotte Harbor Septic to Sewer Conversion Program. Now that an approved plan is in place, the Consortium can begin to draw down funding for projects.

POSITION: *Monitor* federal implementation of the RESTORE Act to ensure continued benefit to Charlotte County. *Support* effort 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 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 have 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 Army Corps of Engineers (Corps) during the Obama Administration developed a final rule to redefine WOTUS. This effort may have significantly expanded the definition of WOTUS to include tributaries, ditches, canals, and other water bodies that potentially drain into navigable waters, interstate waters, or the territorial seas. These water bodies would have been subject to new requirements, and some waters currently covered by a permit would be subject to additional monitoring and regulation when those permits are renewed.

As a result of this expanded definition, several states sued to stop implementation of the rule. Courts blocked the implementation of the rule while the various lawsuits proceeded. Once President Trump took office, he issued an executive order directing the EPA and Corps to reevaluate the Obama Administration’s rule.

The executive order also signaled a significant change in the government's legal strategy for deciding which wetlands and streams are protected under the Clean Water Act. For more than a decade, federal agencies have relied on Justice Anthony Kennedy's opinion in the 2006 wetland-permitting case, *Rapanos v. United States*, in determining where the federal reach over waterways begins. The court ruled in favor of *Rapanos*, but in a 4-1-4 vote, the majority split on what approach to use to define government jurisdiction. President Trump’s executive order specifically asked the agencies to consider the opinion the late Supreme Court Justice Antonin Scalia wrote in the 2006 case, saying the Clean Water Act ought only to cover navigable waters and waterways “with a continuous surface connection” to them — a far more restrictive definition than what the Obama Administration put into its rule.

In December, the EPA and Corps released a new proposed rule. This rule has a narrower definition of WOTUS. The rule focuses on bodies of water that regularly flow into larger waterways or directly adjacent wetlands. It does not include ephemeral bodies of water and only considers surface flows, not underground connections.

This narrower definition should prevent most swales, ditches and upland stormwater control systems, upland waste water recycling systems and waste treatment systems from being subject to WOTUS. The rule would roll back the number of ditches that are considered WOTUS to the pre-2015 definition, which only includes those that are tributaries of navigable waters, allowing routine maintenance of ditches without the need to obtain a federal permit.

Additionally, the rule seeks to provide more clarity and establish clearer definition for what is and is not considered WOTUS. Many groups criticized the Obama Administration rule for not being specific enough and leaving several terms up to interpretation. Environmental groups have alleged that this proposed rule is too narrow, and the EPA acknowledges that they anticipate lawsuits.

POSITION: **Monitor** activity related to the implementation of the Waters of the U.S. rule. **Oppose** aspects of the proposed rule that would negatively affect Charlotte County.



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).

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. On January 17, 2017, the Secretary of the Interior approved BOEM's finalized OCS Oil and Gas Leasing Program for 2017-2022. No lease sales were proposed for the Eastern Gulf and the area is currently under a moratorium through 2022.

Although typically a new five-year plan would not be developed for several years, in April of 2017, President Trump signed the America First Offshore Energy Strategy Executive Order. The Executive Order aims to increase domestic energy production and reduce the use of foreign oil by, in part, expanding offshore drilling. As a part of implementing that order, BOEM is in the process of developing a new 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program.

In January 2018, BOEM released a draft proposed program (DPP) for the National Outer Continental Shelf Oil and Gas Leasing Program for 2019-2024. The DPP includes 47 potential lease sales in 25 of the 26 planning areas, which is the largest number of lease sales ever proposed for a 5-year lease schedule. The DPP includes two sales in the Eastern Gulf of Mexico after the expiration of the moratorium. The County has commented in opposition to these sales in the Eastern Gulf.

Former Governor Scott released a statement in reaction to the release stating his opposition to offshore drilling on Florida's coast and has stated that he has requested a meeting with Interior Secretary Zinke to discuss the proposal. Additionally, Senator Rubio and other members of the Florida delegation released statements criticizing inclusion of the Eastern Gulf in the DPP. Shortly after the release of the DPP, Governor Scott met with Secretary Zinke to discuss the issue. After the meeting, Secretary Zinke stated that Florida was being removed from consideration for any new oil and gas platforms. His announcement did not include detail about what exactly that meant, whether it would apply to seismic testing as well as drilling, or provide a new draft of the DPP. There is some concern that with Secretary Zinke's departure from the Department of Interior at the end of 2018, that DOI may not continue to honor his promise. After accepting comments on the DPP, BOEM will then need to draft and release a Proposed Program, which will be made available for an additional public comment period, so there will be several opportunities to weigh in before the program is finalized.

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 impacts to groundwater and surface water quality, public and private water supplies, and air quality.

In Florida, 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. In May 2016, the NPS issued a finding of no



significant impact following their environmental review. The finding of no significant impact is based on information and conclusions outlined in an environmental assessment completed for the proposed survey. Burnett Oil is required to implement a variety of measures to prevent lasting impacts and minimize short-term impacts to the preserve's resources during survey activities. The environmental assessment only covers the seismic survey. Should Burnett Oil wish to pursue production of resources, they must submit a new plan of operations which would undergo additional environmental review and public comment periods. However, in July 2016, six environmental groups filed suit to stop Burnett Oil's seismic survey. The court subsequently ruled that the drilling posed minimal risk to the Everglades and regional water supplies and recommended the Florida Department of Environmental Protection (DEP) issue the permit. Burnett Oil is currently in Phase 1 of their exploration of Big Cypress National Preserve.

In terms of non-federal land, states broadly regulate oil and gas exploration. 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.

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



FEDERAL ISSUE: Endangered Species Act and Regulatory Reform

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Endangered Species Act

The United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have recently released three proposed rules seeking to modify the application of the Endangered Species Act (ESA). These three proposals were open for comment and the County wrote to support streamlining regulations, increasing cooperation, and expediting the review process. The three rules generally attempt to clarify the situations when the ESA will apply, tighten the definitions regarding when species or habitat are designated under the ESA, and set forth streamlined procedures for consultations and biological opinions.

The first rule seeks to establish that any species newly listed as threatened by the USFWS would only have protective regulations if a special rule was promulgated. Currently, threatened species designated by USFWS have the same protections as species that are listed as endangered. This change would not impact the protections in place on any species that are currently listed as threatened. The rule would bring the USFWS approach in line with that of NMFS and would potentially limit the restrictions placed on newly designated or downgraded species in the future.

The second rule addresses the process for listing or delisting species and designating critical habitat. USFWS and NMFS are proposing to remove the phrase “without reference to possible economic or other impacts of such determination” from their regulations regarding the listing or delisting of species. This would allow them to evaluate, and make public, the economic impact of classifications. The proposed rule states that they will continue to make determinations solely on biological considerations, but that this change in language will allow them to present more information to the public and other federal agencies about the broader impact of listing a species. This provision could impact the listing decision of the monarch butterfly. The rule also clarifies the instances when they can find that it is not prudent to designate a critical habitat, including stipulating that habitat should not be designated as critical if the threat cannot be addressed or stopped through management actions. One example cited in the rule is habitat threatened by melting glaciers or sea level rise. Finally, the rule narrows the instances in which areas that are not currently occupied by a threatened or endangered species can be designated as critical habitat.

The third rule addresses interagency cooperation, specifically dealing with instances where USFWS and NMFS enter into consultation with other federal agencies or must provide a biological opinion. This rule could impact the process for permitting projects, adopting management plans on federal lands, or any other instance where a federal agency is taking action that may impact threatened or endangered species.

The 115th Congress also sought to move several bills that would modify the ESA. The Congressional Western Caucus introduced a package of bills in the House to “bring the ESA into the 21st Century.” In the Senate, Environment and Public Works Committee Chairman John Barrasso (R-WY) released his own draft legislation making changes to the ESA. Senator Barrasso’s legislation seeks to drive more decision making to state and local agencies, weakening the federal government’s role in conservation. These legislative efforts were not successful prior to the end of the 115th Congress and the Democratically-controlled House is unlikely to be interested in proposals to weaken Federal control over endangered species, leaving the best chance for any modifications to the Administration.



Regulatory Reform

The repeal or rolling back of federal agency regulations and executive orders and actions has long been a topic of legislative debate. Congress often considers reversing numerous regulations and executive orders. The Congressional Review Act (CRA), which allows Congress to cast simple majority votes of disapproval for regulations within 60 legislative days of their adoption, is often used to block executive actions. Prior to 2017, it had only been used once since its passage 21 years ago. In the 115th Congress alone, it was used to roll back 16 rules issued by the Obama Administration.

With respect specifically to transportation projects, the National Association of Counties has suggested precluding projects that receive less than \$5 million in funding, as well as emergency projects, from federal requirements, thereby saving millions in added costs due to a variety of federal guidelines. While this issue has been addressed to some degree in past transportation authorization bills, more could be done to strengthen the authority to bypass federal regulations in projects which receive a minimal federal investment. In January 2017, President Trump signed the “Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects.” In it, a process is described whereby a Governor, or the head of any federal agency may request that the Council on Environmental Quality (CEQ) review within 30 days whether a project is deemed “high priority” and can therefore be subject to expedited National Environmental Policy Act (NEPA) review. If a project is deemed high priority by CEQ, then the agency in charge of the permits must develop a schedule for “expedited” NEPA review. This process has, however, is still in the process of being set up. In response to requests from Governors that have been submitted, CEQ has stated that they were still in the process of working with other federal agencies and that information regarding the designation of high priority infrastructure projects would be made available as that process moved forward.

POSITION: *Support* efforts to streamline the Endangered Species Act and increase cooperation with state and local authorities. *Support* efforts to further regulatory reform, including with respect to transportation projects which receive less than \$5 million in federal investment.



FEDERAL ISSUE: Infrastructure Investment

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Traditionally, Congress has invested in infrastructure via a number of methods, primarily through legislation or programs like transportation authorizations, Federal Aviation Administration authorizations, revolving loan funds, through the tax code via bond programs, or earmarks prior to 2009. The last big influx of new investment in infrastructure occurred via the 2009 Stimulus bill.

More recently, spending on a wide range of domestic priorities was increased for fiscal years 2018 and 2019 – including \$20 billion over two years on infrastructure. This funding was described by Congress as a down-payment on the Administration’s infrastructure plan. At the time, those funds were not allocated to specific programs, but a good portion of that funding ended up being directed to Metropolitan Planning Organization’s through the Department of Transportation’s State and Local Block Grant Program.

The Administration released a set of principles to guide the development of an infrastructure package along with the President’s FY 2019 Budget Request this February. In the document, the plan emphasizes a local commitment to creating new taxes or other revenue sources to fund infrastructure improvements. As a result of this focus, little emphasis is placed on leveraging private investment. The key elements of the plan are:

- 1) Infrastructure Incentives Initiative: 50 percent of overall funding, \$100 billion over ten years, nearly any infrastructure project is eligible to compete, based on whether the applicant can demonstrate that they will “secure and commit new [emphasis added], non-federal revenue to create sustainable, long-term funding” (50 percent of overall score) and additional new “revenue for operations, maintenance and rehabilitation” (20 percent of the overall score). Further, grant awards may only account for 20 percent of the overall cost of a project with states not eligible to receive more than 10 percent of overall funding.
- 2) Transformative Projects Program: 10 percent of overall funding; \$20 billion over ten years, will support “exploratory and groundbreaking ideas.”
- 3) Rural Infrastructure Program: 25 percent of overall funding; \$50 billion over ten years, most forms of infrastructure are eligible as in the Infrastructure Incentives Initiative, including broadband. 80 percent of the funding in this category will be made available to Governors for further allocation, must be used in areas with a population of less than 50,000.
- 4) Federal credits program: 7 percent of overall funding, \$14 billion over ten years, to be used to expand existing infrastructure loan programs, such as WIFIA.
- 5) Public Lands Infrastructure Fund: would create a new fund from on- and off-shore mineral and energy development to fund improvements on public lands.

The document also includes other changes to financing mechanisms and tweaks to existing federal programs. Thus far, Congress has not acted on the President’s infrastructure plan.

In the 116th Congress, infrastructure is one of the areas where House Democrats may be willing to work with the Trump Administration. Additionally, there has been significant discussion about a return of earmarks, which may provide other opportunities for funding. New infrastructure investment opportunities could be created and used to fund projects in Charlotte County.

POSITION: **Support** new federal investment in infrastructure. **Support** all opportunities to secure funding for Charlotte County’s infrastructure priorities.



FEDERAL ISSUE: Federal Aviation Administration Authorization

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In October 2018, Congress passed and the President signed, a five year reauthorization of the Federal Aviation Administration (FAA). The bill will:

- Authorize level funding for the Airport Improvement Program (AIP), at \$3.35 billion for each of the next five years
- Authorize an additional \$1 billion annually for supplemental airport discretionary grants, with half prioritized for small airports.
- Extend the contract tower program and make small changes including updating the methodology used to compute the cost-benefit analysis, establishing a review and appeal process for the cost-benefit determination if an airport disagrees with the calculation and allows FAA-certified remote towers to be eligible for the contract tower program
- The bill does not increase the authorized amount of the Passenger Facility Charge (PFC) from the \$4.50 that was last updated in 2001, but does make several administrative changes meant to streamline the approval process for airports seeking to use the PFC.
- Create a Regional Air Transportation Pilot Program and authorizes \$4.8 million annually to assist communities that have experienced declining service in establishing or re-establishing air service.
- Establish a pilot program for the construction and operation of remote towers for small and rural communities.
- The bill also includes some consumer-friendly proposals directing the FAA to establish regulations for minimum seat size on airplanes and no longer allowing passengers to be removed from an over-sold flight once they have boarded the plane.
- The bill does not include the air traffic control privatization language that had been a priority of House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA).

Funding levels authorized in the bill are still subject to the annual appropriations process. For FY 2018, Congress provided \$3.35 billion for the AIP program. The FY 2019 Transportation appropriations bill has yet to be passed by Congress. The Department of Transportation is currently shut down pending FY 2019 spending negotiations.

Contract Tower Program

The contract tower program was extended through the reauthorization for the FAA. However, this is a program that Charlotte County should closely monitor under the Trump Administration.

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. 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.

For FY 2018, Congress funded the program at \$162 million and included report language stating their support of the program and expectation that all 253 contract towers in the program will continue to operate

POSITION: **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: 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.

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 transportation funding growth and investment, even if Congress were to authorize a modest increase. 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.

The 116th Congress will need to begin work on the next transportation authorization bill. In 2020, Congress will need to once again pass a transportation authorization bill. Congress will need to find a way to address the shortfall in the Highway Trust Fund. This could be accomplished via increasing the gas tax, establishing a new vehicle mile traveled fee, cutting program expenditures, using other revenue, or, most likely, a combination of solutions.

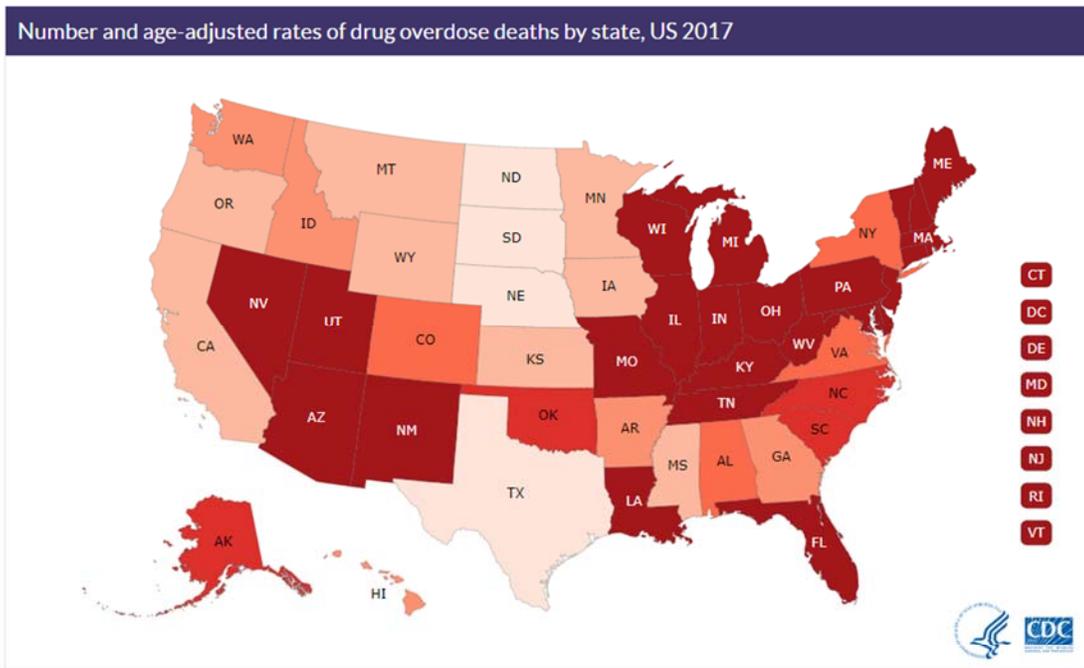
POSITION: **Monitor** proposed changes to federal highway programs. **Support** the passage of a long-term surface transportation reauthorization bill. **Support** sufficient funding for transportation infrastructure projects of importance to the County.



FEDERAL ISSUE: Opioid Addiction

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Opioids are a class of drugs made from opium, as well as synthetic or semi-synthetic drugs that resemble these opium-based drugs. Many opioids are available by prescription. Examples include oxycodone, codeine, morphine, and fentanyl. Heroin is an opioid that is illegal. These drugs are often referred to as narcotics.

Over 47,000 people died of opioid overdoses in the United States in 2017. The below map from the Centers for Disease Control shows total opioid death rates by state. The data in the map encompasses everything from heroin to hydrocodone to fentanyl. Ohio, Kentucky, West Virginia, the District of Columbia and Pennsylvania have highest death rates in the country. For 2017, Florida has the 17th highest opioid related death rate among states as calculated by the CDC and was one of the states that saw a statistically significant increase in drug overdose deaths between 2016 and 2017.



Legend

- 6.9 to 11.0
- 11.1 to 13.5
- 13.6 to 16.0
- 16.1 to 18.5
- 18.6 to 21.0
- 21.1 to 57.0

Congress has taken several major steps on opioid addiction. First was the Comprehensive Addiction and Recovery Act (CARA) passed in July 2016. This bill authorized a variety of activities across many federal agencies to combat opioid addiction. This includes pharmaceutical research and development, law enforcement



tools, addiction recovery programs, and the like. However, CARA does not provide any funding for these activities, leaving the funding levels for each of the authorized activities subject to annual appropriations.

The 21st Century Cures Act, passed in December 2016, also addresses opioid abuse. Section 1003 of the bill provides \$1 billion to the states to address opioid abuse. The \$1 billion is to be provided over a two-year period, and the first \$500 million was appropriated in the FY 2017 Continuing Resolution in December 2016. Florida received just over \$27.1 million through the first allocation of funding. During a recent Senate Health, Education, Labor and Pensions (HELP) Committee hearing regarding the implementation of the 21st Century Cures Act, the Administration stated that they plan to continue to allocate opioid epidemic funding based on a state's population, rather than considering need. This will provide more funding to Florida as a high-population state.

In October of 2017, President Trump declared the opioid crisis a national public health emergency. Public health emergencies are typically reserved for outbreaks of infectious diseases and provide a narrow focus. The public health emergency declaration falls short of the national emergency declaration recommended by the President's Commission on Combating Drug Addiction and the Opioid Crisis. No additional federal funds are provided through the declaration and it provided few tangible, on the ground benefits.

In addition to the public health emergency declaration, the President announced a new anti-drug advertising campaign and emphasized several other ongoing efforts, such as a public-private partnership through the National Institute of Health to develop safer pain treatments. He also stated that the administration would be looking at waiving some inpatient treatment Medicaid restrictions, but did not commit any additional dollars to the effort or outline any details about the waivers.

The 115th Congress pursued several avenues for addressing the opioid crisis, ultimately passing the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, or the SUPPORT for Patients and Communities Act in October of 2018. All parties agree that this legislation is simply a first step in addressing the crisis and will not solve the problem on its own. The bill addresses sober living homes, in part by making it illegal to receive a kickback or payment for enrolling someone in a sober home. This does not comprehensively address the issue but is a step in the right direction. The bill also has a significant impact on increasing Medicaid coverage for substance use disorders. The bill temporarily allows states to use federal Medicaid funds for coverage of institutional treatment of all substance abuse disorders for up to 30 days. Currently, federal law prohibits the use of Medicaid funds for treatment in facilities with more than 16 beds. This should assist those in need to be able to access care and enable facilities to increase the number of treatment beds they offer. The bill will also require providers to check prescription drug monitoring databases (PDMP) prior to prescribing a controlled substance and facilitate access to PDMPs for state Medicaid agencies, Medicaid providers and managed care plans. Finally, the bill creates several small grant programs for providers to support implementation of voluntary programs for care and treatment of individuals after a drug overdose, to support treatment for individuals with a substance abuse disorder at comprehensive opioid recovery centers, and for hospitals and emergency departments to develop, implement, enhance, or study alternatives to opioids for pain management. Each of these programs is authorized at \$10 million per year for the next five years.

The opioid crisis will likely continue to be an area of focus of the Trump Administration and the 116th Congress.

POSITION: *Support* appropriations activities to fund programs in CARA and the 21st Century Cures Act. *Monitor* HHS for guidance regarding the allocation of 21st Century Cures state formula funding. *Support* attempts by entities within Charlotte County to secure funding to fight opioid addiction.



FEDERAL ISSUE: Healthcare Reform

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 included a number of mechanisms, including individual and employer mandates, insurance exchanges, minimum standards of care, and new taxes/fees to accomplish these goals.

With legislative efforts to fully repeal and replace the ACA failing in 2017, several smaller efforts have emerged to undermine or modify the ACA. These efforts include the Trump Administration’s decision in October to cut off subsidies to insurers selling coverage through the ACA, an earlier decision to reduce the advertising budget for the ACA’s open enrollment period by 90 percent, and cutting back on grants to navigators, who assist citizens in enrolling by approximately 40 percent. Additionally, the individual mandate was repealed as a part of tax reform. With Democrats taking control of the House in the 2018 midterm elections, any legislative efforts to further repeal provisions of the ACA are unlikely to gain traction, however there may be changes that seek to address pre-existing conditions or roll back changes enacted over the past two years.

With respect to Medicaid, if it were changed to a block grant program, federal expenditures would be limited to a set amount given to states, ostensibly with fewer strings attached. This however, could end up forcing states and counties to come up with more money for Medicaid depending on how large of a block grant is provided to Florida and what type of program the state develops.

Additionally, Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma has indicated support for changes to the Medicaid program. In late 2017, she indicated that CMS would encourage states “to propose innovative Medicaid reforms, reduce federal regulatory burdens, increase efficiency, and promote transparency and accountability.” As an example of the type of changes CMS would be supportive of, Administrator Verma indicated that they would approve waiver requests from states that include a requirement that recipients participate in community engagement activities, such as employment, job training and education. CMS has subsequently approved waiver requests for a handful of states. This is a significant shift for the Medicaid program and could affect the number of participants in the program, impacting the County’s cost-share with the state and shifting uninsured health care costs onto local hospitals and communities. Florida has yet to seek such a waiver, however, Governor-Elect DeSantis has recently appointed Mary Mayhew as the Secretary of the Agency for Healthcare Administration. Ms. Mayhew most recently worked from CMS as a senior official overseeing Medicaid for the Trump Administration and strongly supports state flexibility in the program and has previously worked to prevent Medicaid expansion and enact work requirements in the state of Maine.

Meanwhile, Congress will have to continue to address the issue of 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. Under current law, and beginning in 2022, a 40 percent excise tax will be assessed on any dollar amount paid in premiums exceeding the aforementioned values, which, after 2022, will adjust to inflation annually. However, the rate of growth in healthcare costs often outpaces the rate of inflation, meaning employers are likely to pay significantly more each year. 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 tax, which is estimated to generate \$87 billion over the next ten years, is an offset to pay for the ACA.



The excise tax was originally slated to begin in 2013. However, due to strong concerns expressed by labor groups and others, the ACA has been amended multiple times by Congress to delay the tax until 2022.

POSITION: **Monitor** efforts to repeal, replace or amend the Affordable Care Act. **Monitor** changes to Medicaid and Medicare. **Support** the repeal of the excise tax on high-cost health insurance plans (a.k.a. the Cadillac tax) within the Affordable Care Act.



FEDERAL ISSUE: Medical Marijuana

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Despite medical or recreational cannabis laws in 46 states, cannabis is still illegal under federal law. The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), which does not recognize the difference between medical and recreational use of cannabis. Under federal law, cannabis is treated like every other controlled substance, such as cocaine and heroin.

In 2016, the voters of Florida passed a state constitutional amendment to allow the use of medical marijuana. Subsequently, the Office of Compassionate Use under the Florida Department of Health has begun implementing a state-managed medical marijuana program. Additionally, the state legislature has passed limitations on the zoning of dispensaries and local governments have taken action to either allow or ban dispensaries within their boundaries. Charlotte County has opted to allow such dispensaries and is currently regulating them as pharmacies with respect to land use. All other local regulation is preempted by the state of Florida.

In January of 2018, the Department of Justice (DOJ) issued a new memo on federal marijuana enforcement. Essentially, this memo rescinds the so-called “Cole Memo” issued by the Obama Administration in 2013 that provided guidance to prosecutors and law enforcement to direct their focus away from enforcement in states where marijuana had been legalized. The new memo directs all U.S. Attorneys to enforce federal law and follow DOJ’s principles in determining which cases to prosecute, rather than taking into account state law. This policy change has been criticized by many members of both parties in Congress as an infringement of state’s rights. Former Attorney General Sessions made it clear that he opposed the legalization of marijuana for both medical and recreational use. With the departure of Attorney General Jeff Sessions, it remains to be seen whether DOJ will continue down this path to restrict state legalization of marijuana.

The DOJ is currently prohibited from using resources to interfere with state run medical marijuana programs, such as the one in Florida, as a result of a provision in the Fiscal Year 2018 omnibus appropriations bill (which was also included in the FY 2015, 2017 and 2017 bills) that has been extended along with each of the recent continuing resolutions. Both the House and Senate have included the language in their individual bills for FY 2019, however they are still subject to negotiation and the Department of Justice is currently shutdown due to the pending negotiations.

Several bills were filed in the 115th Congress to address marijuana policy, however none of them have gained significant traction.

POSITION: *Support* legislation to prevent federal interference with Florida’s medical marijuana program.



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 strong funding levels over the past few years, receiving \$715 million in FY 2016, FY 2017 and FY 2018. In both President Trump's FY 2018 and FY 2019 budgets, he proposed eliminating CSBG, however Congress has not agreed to that request. For FY 2019, the program was funded at \$725 million.

Meanwhile, the Low Income Home Energy Program (LIHEAP) provides heating assistance to low-income households. In Charlotte County, 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. Since FY 2010 when LIHEAP was funded at \$5.1 billion, Congress has reduced funding to the program. The Trump Administration also proposed eliminating this program in their both their FY 2018 and FY 2019 budgets, however both the House and Senate slightly increased funding in FY 2019 to \$3.7 billion.

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, would 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 Trump Administration published a notice in the Federal Register in January of 2018 suspending the requirements of the rule until 2020. The Assessment Tool, created by HUD to help communities comply with the requirements was found to be too labor intensive for both HUD and the local governments and housing authorities and that it produced incomplete or inaccurate reports and the tool has since been withdrawn. In October of 2018, HUD solicited comments on the best way to construct a new rule. HUD has yet to release a draft rule, but is likely to do so within the next year.

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



FEDERAL ISSUE: Economic Development

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Economic Development Administration

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.

Non-profits or local governments, such as Charlotte County, are local sponsors of the projects. For example, infrastructure projects such as those designed to support the 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 Trump Administration has proposed eliminating the Economic Development Administration (EDA) in both of their budget requests since taking office. Congress has not gone along with this proposal, funding the EDA at \$301.5 million in FY 2018. The EDA is currently shutdown due to ongoing spending negotiations for FY 2019.

Opportunity Zones

Opportunity Zones were created by the Tax Cuts and Jobs Act that was signed into law in late 2017. This program is designed to spur investment in distressed communities through the designation of opportunity zones and the creation of a tax-incentivized investment vehicle, called opportunity funds. After the passage of the law, each Governor was tasked with identifying the census tracts in their state that would be designated as opportunity zones and eligible for investment from opportunity funds. Eligible census tracts needed to have poverty rates of at least 20 percent or median family income of no more than 80 percent of the statewide or metropolitan area family income. Three census tracts in Charlotte County were designated as Opportunity Zones.

The Opportunity Zone program is intended to generate significant investment in distressed communities, however there is still much to be determined about how the program will work, how locations will be able to attract investors, and the tangible benefits that will be realized by communities.

Treasury estimates that nearly 35 million Americans live in the designated Opportunity Zones and that median family incomes in the zones are, on average, 37 percent below the local or state median, and unemployment rates are nearly 1.6 times higher than the average census tract. The proposed regulations developed to date for Opportunity Zones by the Treasury have begun to provide a sense of how the invested funds may be used. Specifically, the proposed rule will:

- Allow opportunity funds to take up to 31 months to invest in real estate development projects in opportunity zones. This timeframe will allow the funds to invest in more complex projects that can take a significant amount of time for planning, permitting and design.
- Allow investors to continue to claim tax benefits through the program until 2048, despite the fact that the legislation establishing opportunity zones currently sunsets in 2028. This will encourage people to continue to invest in opportunity zones throughout the entire 10 year designation period.
- Clarify that the requirement that an investor spend at least as much to improve property as they paid for it applies only to building and not to the underlying value of the land. This may make it easier for smaller



renovation projects to get off the ground, but could also allow investors to reap the tax benefit of purchasing land with little additional investment into the community.

- Clarify that 70 percent of the tangible property held by an opportunity fund must be in an opportunity zone, allowing up to 30 percent to be held in other areas. This may make it easier to invest in existing businesses or businesses looking to expand.
- Clarify the process for a taxpayer to elect to defer a capital gain and the process for investing in an opportunity fund.
- Permit any taxpayer that is a corporation or partnership for tax purposes to self-certify as a Qualified Opportunity Fund (QOF), including those set up as a limited liability corporation (LLC).
- Finally, the proposed rule states that taxpayers can rely on these regulations for any investments made prior to the publication of the final rule, this will allow investments to begin to be made immediately without investors worrying that they will be penalized if the final regulations differ in some way from this proposal.

These regulations are not comprehensive and do not cover several areas including the how penalties could be applied to opportunity funds that do not comply with the rules, the definition of qualified opportunity zone business property, the tax consequences of the sale of an asset by an opportunity fund, and issues surrounding the exit of investors from a fund. This round of regulation was also silent on reporting requirements for the funds that would detail how much is being invested in Opportunity Zones and how it is being used, which would provide transparency to help evaluate the program's effectiveness in encouraging economic growth.

Treasury anticipates a second set of regulations to be released in the next few months with additional public comment periods available after that.

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. *Monitor* Opportunity Zone regulations to help Charlotte County gain as much benefit as possible from development in their three Opportunity Zones-designated Census tracts.



FEDERAL ISSUE: Federal Emergency Management Agency Disaster Assistance

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Federal Emergency Management Agency (FEMA) assists local governments, through the state, after disasters with funding for recovery projects. This funding follows a specific process where counties seek reimbursement through the State Division of Emergency Management and FEMA for projects. Once a project is completed, a close-out process is requested of FEMA by the county and state and a final payment is made. Previously, a county could have its project audited by the Department of Homeland Security's Inspector General's office for up to three years after the closeout of the entire disaster, rather than the closeout of the project. As a result of these audits, the Department of Homeland Security could determine that monies were spent incorrectly and must now be "de-obligated" or repaid to the state and federal government. In recent years in Florida, most of these audits are from storms during the 2004 and 2005 hurricane season, meaning many of these projects have been completed for over a decade.

After years of work to address this issue and legislation filed by Congresswoman Lois Frankel (D-FL) and both Senators Rubio and Nelson, the language limiting de-obligations to three years after the closeout of a project was finally adopted as part of the Federal Aviation Administration reauthorization bill. FEMA and DEM must now implement the new law, including the provision that stops any ongoing de-obligations that exceed the three-year limitation.

POSITION: *Monitor* implementation of the legislation to prohibit the Federal Emergency Management Agency from de-obligating previously awarded disaster funds for projects that have been certified as complete by the state for at least three years.



FEDERAL ISSUE: Domestic Discretionary Spending Pressure

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In both of their budget proposals since taking office, the Trump Administration has proposed drastic cuts to and eliminations of several domestic spending programs. The budget proposal included cuts to or the elimination of several programs of importance to the County. In February of 2018, the President released his FY 2019 budget, which includes many of the same cuts. It is likely that the FY 2020 budget will include many of the same cuts and eliminations.

Among other things, following are areas of concern with the President's budget proposals:

- Eliminate/Reduce FEMA state and local grant funding by \$667 million including Pre-Disaster Mitigation Grants and the Homeland Security Grant Program, including the Urban Area Security Initiative program (UASI). The budget also calls for a 25% non-Federal match for FEMA preparedness grants that currently do not require any match.
- Eliminate the Community Development Block Grant program (CDBG)
- Eliminate HOME, Choice Neighborhoods and the Self-help Homeownership Opportunity Program
- Eliminate the Community Services Block Grant Program (CSBG)
- Eliminate the Low Income Home Energy Assistance Program
- Eliminate an additional \$490 million in Department of Justice programs.
- Eliminate the Economic Development Administration, which provides grants for local economic development projects that create jobs
- Eliminate the EPA's National Estuary program
- Eliminate the SeaGrant Program
- Eliminate the TIGER grant program

After the release of the Administration's FY 2018 and FY 2019 budgets, the County engaged with members of your delegation to advocate for these programs. Congress ultimately funds the government and can ignore much of what the President has recommended, but the budget proposes so many reductions or whole elimination of programs while significantly boosting spending in other areas (defense, a southern wall, for instance) that many members of Congress support and it will therefore be difficult to restore all funding to domestic agencies or programs of importance. If a piece of the pie gets bigger, the entire pie is not likely to grow – instead other pieces will get smaller.

Another threat to discretionary spending is sequestration. The Budget Control Act (passed in 2011) established budgetary caps in law for discretionary spending – one cap for defense accounts and another for non-defense accounts – through FY 2021. The penalty for spending over the caps is a sequestration of funds through a percentage-based cut to every account, program and project funded by discretionary spending, to ensure spending is in line with the budgetary caps. In February of 2018 Congress passed legislation to raise the budget caps for both defense and non-defense accounts for two fiscal years, avoiding the threat of sequestration for that time period. Budget caps will return in Fiscal Year 2020, meaning that appropriations bills considered by Congress in early 2019 will have to abide by the limitations of the Budget Control Act unless Congress devises a new workaround.

POSITION: *Monitor* proposed cuts to non-defense discretionary programs of importance to Charlotte County.



FEDERAL ISSUE: Website Compliance with the Americans with Disabilities Act

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Americans with Disabilities Act (ADA) was signed into law in 1990 by then President George H.W. Bush and prohibits discrimination based on disability. Although the law does not specifically mention websites, the Department of Justice has interpreted that the ADA does apply to websites for the past 20 years. Recently, there have been several lawsuits across the country alleging that websites of both public and private entities do not comply with the ADA. In Florida, as in other areas of the country, numerous lawsuits are filed on behalf of the same plaintiff against a variety of entities.

The Department of Justice issued two rulemakings regarding the development of standards for website accessibility under the Obama Administration, however, the Trump Administration withdrew those rulemaking actions in 2017. In the Notice of Withdrawal, the Department of Justice noted that they would be evaluating whether specific web accessibility standards were needed before deciding how to proceed. DOJ has indicated in correspondence with Congress that they believe not having a standard provides websites with more flexibility and fulfills the Trump Administration's commitment to reducing regulations.

Several members of Congress have expressed frustration with the large number of lawsuits centered around ADA compliance. In the 115th Congress, the House passed a bill (HR 620) that would have required potential plaintiffs to notify businesses who aren't in compliance with the Americans with Disabilities Act before filing a lawsuit. It would give the defendants four months to demonstrate their intent to comply and if they did not come into compliance, a lawsuit could still be filed. This bill was aimed at addressing frivolous lawsuits and it was limited to "architectural barriers" (parking, ramps, counter height etc.) which would not include websites. The bill did not move at all in the Senate and faced significant pushback from disability advocacy groups. With only 12 Democrats supporting the legislation last year when it came to a vote on the floor, it is unlikely that it will be brought up again in the 116th Congress.

POSITION: **Support** the issuance of guidance from the Department of Justice to provide objective standards for website to be in compliance with the Americans with Disabilities Act. **Monitor** legislation that impacts the Americans with Disabilities Act.



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 only remit \$3 dollars to the local government instead of \$5 (using the County's five 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 ruling 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. The amount owed in the lawsuit was estimated to be over \$200 million.

In 2015, local governments reportedly had filed 88 lawsuits against OTCs 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 2018, Charlotte County collected over \$6.4 million in transient occupancy taxes, which is used to support the tourism industry in the region. This level of funding underscores the importance of this revenue source and the need to ensure it is not constrained by detrimental legislation.

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.

The Obama Administration had proposed a 28 percent limit on all itemized deductions for high-income individuals in its Fiscal Year (FY) 2017 budget. If this proposal had been accepted by Congress, it would have applied 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 have cost nearly \$500 billion over the same time period.

The issue of the deductibility of municipal bonds was not included in the comprehensive tax reform legislation signed into law at the end of 2017, however it may continue to be an issue in the future. If this deduction was eliminated in the future, it would mean that bond issuers would have to offer higher rates to attract investors. 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.

Advanced Refunding of Bonds

Meanwhile, Representatives Randy Hultgren (R-IL) and C.A. Dutch Ruppersberger (D-MD) introduced legislation to restore the tax exemption for advance refunding bonds that was repealed in the Tax Cuts and Jobs Act. The legislation had twenty cosponsors but did not advance in the 115th Congress. The County has advanced refunded bonds in the past to take advantage of lower interest rates and save constituents money.

POSITION: **Oppose** legislation that would threaten the tax exemption on state and local bonds. **Support** the passage of legislation to again allow for advanced refunding of tax-exempt bonds.