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## *Legislative History Projects: Finding Intent in Solid Waste and Stormwater Management Legislation*

The Supreme Court of Florida recently stated: "As the Court often has noted, our obligation is to honor the obvious legislative intent and policy behind an enactment, even where that intent requires an interpretation that exceeds the literal language of the statute."<sup>1</sup> The court previously wrote: "It is a fundamental rule of statutory construction that legislative intent is the polestar by which the Court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute."<sup>2</sup> It is well-settled that to determine legislative intent, courts may consider the history of the enactment of a statute.<sup>3</sup> When construing a statute, Florida courts will consider the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on its subject.<sup>4</sup> Thus, it is basic that in interpreting a statute, "resort may be had, if necessary, to the history of the legislation and to public history of the times in which it was passed in order to determine its purpose, meaning and effect."<sup>5</sup>

The lead article in the inaugural *Review of Florida Legislation* examined the use of legislative history as an aid to statutory construction in Florida.<sup>6</sup> The article noted that courts increasingly are relying upon legislative history when construing statutes. The article identified three reasons why courts may be expected to rely upon legislative history as an aid to statutory construction:

First, the Florida decisions indicate a judicial willingness to rely on materials outside the statute. Second, the overwhelming weight of national authority approves the use of extrinsic aids. Third, statutory history can be a valuable tool in construing an ambiguous provision and confirming a result reached through other means, even where the language is clear.<sup>7</sup>

Further, the article noted two justifications for the increased use of legislative history:

First, if "legislative intent" is the criterion of decision, the meaning which the legislators themselves attributed to any measure during the law-

*Florida lacked "a simple, systematic means of locating and documenting materials which bear significantly on legislative intent"*

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making process has evidentiary value. If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded. Second, legislative history, when available, allows a court to avoid all the artificialities which make the rules of statutory construction an impenetrable tangle of waste words. State court opinions are replete with archaic and meaningless maxims which achieve results but which guarantee neither achievement of legislative policy nor professional respect.<sup>8</sup>

Not surprisingly, the article concluded that "Florida courts are favorably disposed to consider extrinsic aids in determining legislative intent."<sup>9</sup>

Unfortunately, the article found that even though courts were increasingly willing to consider legislative history, the use of such materials is "difficult, not because of judicial reservation, but because there is no systematic method by which materials are developed, collected, and retained."<sup>10</sup> Florida simply lacked "a simple, systematic means of

locating and documenting materials which bear significantly on legislative intent."<sup>11</sup>

It is in recognition of this problem that the *Legislative History Projects* was created.

### **The Legislative History Projects**

Perhaps no area of Florida law has changed so dramatically in recent years as environmental and land use law.<sup>12</sup> The passage of complex environmental bills, together with an increased awareness of Florida's environmental problems, has created the potential for a considerable amount of environmental litigation. With the rapid development of environmental law in Florida, the Environmental and Land Use Law Section of The Florida Bar recognized the need for an increased availability of environmental statutory history. The section sought to provide the practicing attorney and decisionmakers with an exhaustive legislative history of newly enacted and complex environmental legislation.

To achieve this goal, the section contracted with the Florida State University Policy Studies Clinic to conduct two comprehensive *Legislative History Projects*. The first project compiled the legislative history of the Florida Solid Waste Management Act of 1988. The second project compiled the legislative history for the stormwater management legislation of 1989.

The *Legislative History Projects* was developed by teams of policy studies fellows from the Florida State University College of Law.<sup>13</sup> Law students tracked the bills through their respective legislative sessions. The students attended committee meetings, interviewed staff members, and collected all materials relating to the bills. As a result of the tireless efforts of the policy studies fellows, virtually everything produced during the legislative session relating to the bills being tracked was collected. Once collected, the legislative materials were arranged chronologically. The students were careful to exclude any "subjective" summaries or interpreta-

tions of the bills and instead sought to collect only "pure" legislative history. The end product of the projects is exhaustive and comprehensive compilations of the complete legislative histories of the two environmental bills.

The legislative history of the Florida Solid Waste Management Act of 1988 is contained in a six-volume set of materials. The legislative history of the stormwater management legislation of 1989 is contained in a two-volume set of materials. Thus far, copies of the *Legislative History Projects* have been added to the permanent collections at the law school libraries at Florida State University, Nova University, St. Thomas University, Stetson University, the University of Florida, and the University of Miami. The practicing attorney and decisionmaker now have available the complete legislative history of two significant and highly complex environmental bills.

The following brief analysis of each bill demonstrates the importance and usefulness of the *Legislative History Projects*.

### **Solid Waste Management Act of 1988**

According to House Speaker Jon Mills, the solid waste problem in 1988 was "the major environmental priority of the session."<sup>14</sup> Recognizing "the need to find solutions before the solid waste problem reached crisis proportion statewide,"<sup>15</sup> Senate President John W. Vogt appointed the Senate Select Committee on Solid Waste Management. The committee reported that "each Floridian generates more than six pounds of solid waste each day for a total of 13 million tons per year statewide;" the state population was increasing rapidly; there was a decrease in the availability of suitable land for landfills; the costs for solid waste disposal were rising; and many solid waste facilities were in violation of environmental standards.<sup>16</sup> Furthermore, the Department of Environmental Regulation reported that by 1990, Florida's solid waste generation would increase by nearly five million tons and landfilling costs would increase by 86 percent over the 1985 level.<sup>17</sup> DER also noted that on a national basis, solid waste management is the second largest expense of local governments.<sup>18</sup> Finally, the committee noted that one-third of the landfill space available in 1985 will be closed by 1996.<sup>19</sup> Not surprisingly, the committee concluded that solid waste management was an "urgent problem" facing the State of Florida.<sup>20</sup>

The need for comprehensive legislation to resolve Florida's solid waste program also was noted by the Florida House of Represent-

tatives Natural Resource Committee. A summary of CS/HB 1487 stated:

The mismanagement of solid waste can create serious problems for Florida's environment and for the health of the citizens of the state. Solid waste that is poorly managed can cause contamination of groundwater and surface waters; allow migration of landfill gases; create wind-blown litter and debris; require more land than would otherwise be needed for disposal; and require the expenditure of millions of dollars for remedial cleanup. Increased generation of solid waste, from both a growing population and the increased use of disposable materials, can magnify the adverse effects of the mismanagement of solid waste as well as consume valuable natural resources.

Environmental and public health problems caused by the mismanagement of solid waste are beginning to appear in Florida and nationwide. According to a 1985 report on solid waste landfill closure prepared by the University of Florida, 40 sites on the Florida Hazardous Waste Sites List are or were solid waste landfills. A draft document from the Department of Environmental Regulation (DER) reports that 25 percent of the sites on the federal Superfund Cleanup List are old, leaking landfills. A 1987 draft study prepared by the University of Florida for the South Florida Water Management District found that there are approximately 3,500 acres of leaking landfills in south Florida that are releasing approximately two million gallons of concentrated leachate per day that could contaminate groundwater supplies.<sup>21</sup>

To combat these problems, the 1988 Legislature enacted the Florida Solid Waste Management Act.<sup>22</sup> This comprehensive solid waste bill addresses landfill problems, recycling, and a number of other solid waste problems. The legislature set forth an extensive list of declared purposes for the legislation.<sup>23</sup> Predominant among these declared purposes was the charge to:

Plan for and regulate in the most economically feasible, cost-effective, and environmentally safe manner the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public safety, health, and welfare; enhance the environment for the people of this state; and recover resources which have the potential for further usefulness.<sup>24</sup>

Given such a monumental goal, it is no wonder that the act comprised one of the most comprehensive pieces of environmental legislation to be enacted. The major features of the act are summarized below.

First and foremost, the act established a statewide goal to reduce the amount of solid waste by 30 percent by 1994.<sup>25</sup> To accomplish this goal, the DER was directed to develop, implement, and adopt by rule a state solid waste management program.<sup>26</sup> The act sets forth in detail the requirements that the state solid waste management program must satisfy.<sup>27</sup> The DER is also authorized to administer the Solid Waste Management Trust Fund<sup>28</sup> and to develop and administer a solid waste grant program.<sup>29</sup> With these funds, the DER is charged to assist counties and municipalities in operating recycling

programs and in generally performing solid waste regulatory and enforcement activities.

The act emphasizes the important role of local governments in solving the state's solid waste problems. Indeed, the act specifically states that the "governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county."<sup>30</sup> The importance of recycling is unmistakably clear in the act. F.S. §403.706(2) commands: "Each county shall initiate a recyclable materials recycling program by July 1, 1989."<sup>31</sup> Under the act, "a majority of the newspaper, aluminum cans, glass, and plastic bottles must be separated from the solid waste disposal facility and must be offered for recycling."<sup>32</sup> A county's solid waste management program must be designed to achieve the goal of a 30 percent reduction of solid waste by the year 1994.<sup>33</sup>

The act encourages local governments to operate their solid waste management systems through the use of an enterprise fund.<sup>34</sup> Counties and municipalities which own or operate a solid waste management facility are authorized to charge disposal fees.<sup>35</sup> Furthermore, a fee may be imposed by local governments with regard to the collection, processing, or disposal of solid wastes.<sup>36</sup>

The act sets forth extensive guidelines in regard to permitting of solid waste management facilities.<sup>37</sup> State agencies are required to procure products and materials with recycled content.<sup>38</sup> State agencies are also required to establish recycling programs.<sup>39</sup> In fact, the Florida Capitol and House and Senate office buildings are designated as recycling demonstration areas.<sup>40</sup> Finally, the act establishes a hazardous waste reduction and elimination assistance program.<sup>41</sup>

Although there are several other important provisions to the Solid Waste Management Act, the above highlights aptly demonstrate the complexity and comprehensiveness of the 1988 legislation. The six volumes of legislative history which form the first *Legislative History Project* are invaluable aid to attorneys and courts in understanding this extensive legislation.

### **Stormwater Management Legislation of 1989**

The 1989 *Legislative History Project* tracked two bills relating to stormwater management: CS/HB 1304 and CS/SB 484. Ultimately, the legislature passed CS/SB 484.<sup>42</sup> However, the major provisions of CS/HB 1304 were amended onto the Senate bill as finally adopted.<sup>43</sup>

The threat to the environment posed by stormwater was recognized by the 1989 Legislature. According to the staff analysis of CS/HB 1304, "[s]tormwater (the flow of water during and immediately after a rainfall event) is the last frontier in environmental degradation to Florida's surface and groundwater. It has been shown that the greatest potential for pollution to receiving waters from stormwater is contained in the first one inch of runoff. . . ."44 Recognizing that "stormwater (nonpoint source) was a leader among polluting discharges to Florida's waters," the legislature in 1987 adopted the Surface Water Improvement and Management Act (Ch. 87-97, Laws of Florida).45 The 1989 legislation thus expanded upon and provided another method to implement the 1987 law.

The 1989 law first added the phrase "eliminate the discharge of inadequately treated wastewater and stormwater runoff into the waters of the state," to the policy statement of the agricultural section of the state comprehensive plan.46 The legislative history of this bill demonstrates that "the codification of this goal statement . . . is intended to provide long-range policy guidance for the orderly growth of the state."47

F.S. §253.01 also was amended to authorize the trustees of the Internal Improvement Trust Fund to spend up to 100 percent of the revenue received from leases of state land in the Everglades agricultural area to assist in the cleanup and protection of Lake Okeechobee and the Everglades. This financial assistance is to be in the form of grants provided to the South Florida Water Management District.48

The 1989 stormwater legislation amended several sections of F.S. Ch. 373. The amendments were designed to "clarify that activities relating to the regulation of surface water management systems specifically include stormwater management systems."49 Notable among the new amendments, the DER is required to amend or replace Fla. Admin. Code Rule 17-25.09 in response to the amendments of F.S. Ch. 373.50 DER also is authorized to adopt by rule "a state water policy, which shall provide goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources."51

F.S. Ch. 373, as amended by the 1989 legislation, now requires that water management districts set forth by rule the "requirements for the monitoring and maintenance of stormwater management systems."52 Furthermore, the water management districts are charged to establish stormwater management goals and to assist local governments in the development of local plans related to water

resource issues.53 The State of Florida, through DER, is directed to assist with the implementation of district stormwater management programs by providing funds from the Surface Water Improvement and Management Trust Fund.54 Several other provisions of Ch. 373 also were affected by the 1989 legislation.

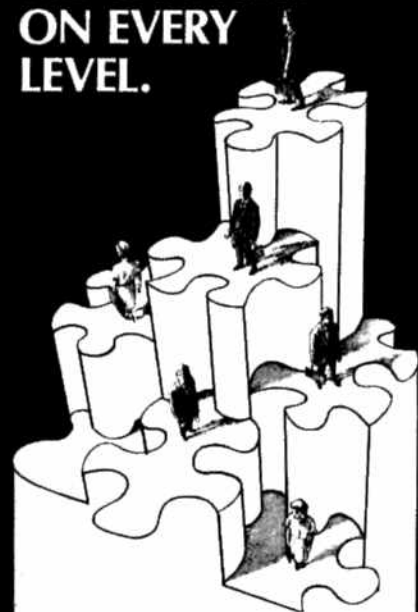
Additionally, the 1989 stormwater legislation amended several sections of Ch. 403. For example, DER, the water management districts, and local governments were given the responsibility for the development of "mutually compatible stormwater management programs."55 DER is directed to include goals in the state water policy for the management of stormwater. Each district is directed to establish district and, if appropriate, drainage basin stormwater management goals. Each local government required to submit a comprehensive plan is further required to consider stormwater management goals and state water policy in the development of its comprehensive plans, and is encouraged to consult with the water management districts.56 To fund these programs, local governments may create one or more stormwater utilities and collect fees sufficient to plan, construct, operate and maintain a stormwater management system.57 Finally, the 1989 legislation creates a Wastewater Treatment and Stormwater Management Revolving Loan Fund to aid in the development of stormwater management systems.58

In short, the comprehensive legislative package attempts to address the problems created by stormwater and the degradation of Florida's surface waters. The above-described provisions highlight only a few of the statutory sections affected by the 1989 stormwater legislation. A full analysis of the purposes and intent of the legislation should include review of the legislative history, compiled in the second *Legislative History Project*.

### Conclusion

As demonstrated by the brief discussion above of the Solid Waste Management Act of 1988 and the stormwater management legislation of 1989, environmental legislation is increasingly comprehensive and complex, and may be subject to differences in interpretation. The *Legislative History Projects* represents a key to full understanding of the legislation, by providing practitioners and decisionmakers with the essential supplemental materials that form the record of legislative intent.59 Affected and other interested persons should consult the projects when researching into these areas of the law by contacting the reference libraries for the

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<sup>1</sup> Byrd v. Richardson-Greenshields Securities, Inc., 552 So.2d 1099, 1102 (Fla. 1989).

<sup>2</sup> State v. Webb, 398 So.2d 820, 824 (Fla. 1981); see also Singleton v. Larson, 46 So.2d 186 (Fla. 1980); Smith v. Ryan, 39 So.2d 281 (Fla. 1949).

<sup>3</sup> See McDonald v. Roland, 65 So.2d 12 (Fla. 1953); Sheffield Briggs Steel Products, Inc. v. Ace Concrete Service Co., 63 So.2d 924 (Fla. 1953); Lummus v. Florida Adirondack School, 168 So. 232 (Fla. 1936).

<sup>4</sup> See State v. Webb, 398 So.2d 820 (Fla. 1981); Foley v. State ex rel. Gordon, 50 So.2d 179 (Fla. 1951); Singleton v. Larson, 46 So.2d 186 (Fla. 1950); Smith v. Ryan, 39 So.2d 281 (Fla. 1949); Childress v. State, 543 So.2d 413 (Fla. 1st D.C.A. 1989); Certain Lands v. City of Alachua, 518 So.2d 386 (Fla. 1st D.C.A. 1987).

<sup>5</sup> Marvin v. Housing Authority of Jacksonville, 183 So. 145, 148 (Fla. 1938). The 11th Circuit has noted as well that when "forced with various suggested interpretations of a statute, it is appropriate for a court to look to legislative history as a guide to its meaning." Continental Can Co. v. Mellon, 825 F.2d 308, 310 (11th Cir. 1987).

<sup>6</sup> Rhodes & Seereiter, *The Search for Intent: Aids to Statutory Construction in Florida—An Update*, 13 Fla. St. U. L. Rev. 485 (1985). This article updated the previous article of Rhodes, White & Goldman, *The Search for Intent: Aids to Statutory Construction in Florida*, 6 Fla. St. U. L. Rev. 383 (1978).

<sup>7</sup> *Id.* at 509.

<sup>8</sup> *Id.* at 489 (citations omitted).

<sup>9</sup> *Id.* at 510.

<sup>10</sup> *Id.* at 510-11.

<sup>11</sup> *Id.* at 511.

<sup>12</sup> For example, the Senate Select Committee on Solid Waste noted in 1988 that "[o]ver the past ten years, Part IV, Chapter 403, F.S., has been amended each year by the Legislature." Staff of Fla. Senate Select Comm. on Solid Waste Management, A REPORT ON THE ACTIVITIES OF THE SENATE SELECT COMMITTEE ON SOLID WASTE MANAGEMENT 15 (Feb. 1988).

<sup>13</sup> The 1988 policy studies fellows were Celia M. Mendez, Harriet R. Williams, and Michael A. Pfundstein. The 1989 policy studies fellows were Juan P. Bauta II, Joan K. Koch, and Lillian M. Tilford. The director of the Policy Studies Clinic at the Florida State University College of Law is

Donna R. Christie, associate professor of law.

<sup>14</sup> Blanton, *Martinez Declares War on Litter*, Orlando Sentinel, Jan. 27, 1988, at A-1.

<sup>15</sup> A REPORT ON THE ACTIVITIES OF THE SENATE SELECT COMMITTEE ON SOLID WASTE MANAGEMENT at pp. 5-6.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.* at 79. Many of the concerns involving solid waste management are set forth in the legislative findings of the act. See Fla. Stat. §403.702(1) (1989).

<sup>21</sup> Staff of Fla. H.R. Comm on Nat. Resources, CS/HB 1487 (1988) Staff Analysis 1 (final May 13, 1988).

<sup>22</sup> The act has been codified at Fla. Stat. §§403.702 *et seq.* (1989). For a thorough discussion of the act, see Preston & DeRose, *The 1988 Solid Waste Management Act—Facing Up to the Garbage Component of Florida's Burgeoning Growth*, 16 Fla. St. U. L. Rev. 597 (1988).

<sup>23</sup> Fla. Stat. §403.702(2) (1989).

<sup>24</sup> Fla. Stat. §403.702(2)(a) (1989).

<sup>25</sup> See Fla. H.R. Jour. 1453 (Reg. Sess. 1988); Fla. S. Jour. 944 (Reg. Sess. 1988); Fla. Stat. §403.706(4) (1989).

<sup>26</sup> Fla. Stat. §403.704(1) (1989).

<sup>27</sup> Fla. Stat. §403.705 (1989).

<sup>28</sup> Fla. Stat. §403.709 (1989).

<sup>29</sup> Fla. Stat. §403.709 (1989). See also Fla. Stat. §403.704(22) 1989.

<sup>30</sup> Fla. Stat. §403.706(1) (1989).

<sup>31</sup> In fact, the legislative findings were revised to emphasize recycling. See Staff of Fla. S. Comm. on Nat. Resources, CS/SB 1192 (1988) Staff Analysis 2 (May 18, 1988).

<sup>32</sup> Fla. Stat. §403.706(2)(b) (1989).

<sup>33</sup> Fla. Stat. §403.706(4) (1989). If achievement of this goal would have an adverse effect on a county's financial obligations directly related to a waste-to-energy facility, the goal may be reduced or modified. Fla. Stat. §403.706 (b) (1989).

<sup>34</sup> Fla. Stat. §403.7049(2)(b) (1989).

<sup>35</sup> Fla. Stat. §403.7049 (4) (1989).

<sup>36</sup> Fla. Stat. §403.7049(5) (1989). Interestingly, in a survey of proposed DER legislation, set forth in Vol. VI of the Legislative History of Florida Solid Waste Management Act at page 525, the summary indicated that all county programs "must" be supported by a user fee or "enterprise" system. (emphasis supplied). This is not reflected in the bill as finally adopted.

<sup>37</sup> Fla. Stat. §403.707 (1989).

<sup>38</sup> Fla. Stat. §403.7065 (1989).

<sup>39</sup> Fla. Stat. §403.714 (1989).

<sup>40</sup> Fla. Stat. §403.7145 (1989).

<sup>41</sup> Fla. Stat. §403.7223 (1989).

<sup>42</sup> See Fla. H.R. Comm. on Environmental Regulation, 1989. HOUSE COMMITTEE REPORT 3 (1989); Ch. 89-279, §2, 1989 Fla. Laws I471, 1472.

<sup>43</sup> 1989 HOUSE COMM. ON REGULATION REP. at 3.

<sup>44</sup> Staff of Fla. H.R. Comm. on Environmental Regulation, CS for HR 1304 (1989) Staff Analysis 1 (May 23, 1989).

<sup>45</sup> *Id.* See also Fla. Stat. §451(4)(a).

<sup>46</sup> See Fla. Stat. §187.201 (23) (b) (13.) (1989). This policy is also now reflected in Fla. Stat. §373.016(2)(e), which was amended to declare the policy of the legislature to "minimize degradation of water resources caused by the discharge of stormwater."

<sup>47</sup> Staff of Fla. H.R. Comm. on Environmental Regulation, CS for HB 1304 (1989) Staff Analysis

3 (May 23, 1989).

<sup>48</sup> Fla. Stat. §253.01(3) (1989).

<sup>49</sup> Fla. S. Comm. on Nat. Resources & Conser., 1989 Session Wrap-Up on Legislation Passed 24 (June 5, 1989).

<sup>50</sup> See *id.* at 24.

<sup>51</sup> Fla. Stat. §373.026(10) (1989).

<sup>52</sup> Fla. Stat. §373.416 (3) (1989).

<sup>53</sup> Fla. Stat. §373.0391 (1989).

<sup>54</sup> Fla. Stat. §373.451(8) (1989). The Surface Water Improvement and Management Trust Fund provision is set forth in Fla. Stat. §373.459.

<sup>55</sup> Fla. Stat. §403.0891 (1989).

<sup>56</sup> Fla. Stat. §§403.0891(1)-(3) (1989). The Department of Transportation is also required to inventory and map primary stormwater management systems constructed, operated, or maintained by DOT in each water management district. Fla. Stat. §403.0891(4) (1989).

<sup>57</sup> Fla. Stat. §403.0893(1) (1989).

<sup>58</sup> Fla. Stat. §403.1835(9) (1989).

<sup>59</sup> The table of contents for the *Legislative History Projects* is listed at 5 Fla. STATE UNIV. JRL OF LAND USE AND ENVTL. LAW 773 (Spring 1990).

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