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# Memorandum

To: Hon. Don Slesnick, Mayor  
Hon. William H. Kerdyk, Vice Mayor  
Hon. Maria Anderson, Commissioner  
Hon. Rafael "Ralph" Cabrera, Commissioner  
Hon. Wayne E. "Chip" Withers, Commissioner

From: Fausto B. Gomez

CC: Patrick G. Salerno, City Manager

Date: October 5, 2010

Re: End-of-Session Report (2010)

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I am pleased to report on the activities of this firm on behalf of the City of Coral Gables during the legislative session. This was an extremely difficult year, with the recession and individual political considerations heightening every budget and policy decision. The session began with Governor Charlie Crist's "State of the State" address in which he vigorously defended his governing record within the context of party orthodoxy and ended by him deciding to run as an Independent for the United States Senate. Also impacting the session was the continuing saga of former Speaker Ray Sansom who resigned from the House prior to his peers conducting ethics hearings and is now the subject of criminal complaints, accusations of legislators abusing their political party issued credit cards, and corruption with regard to the Executive Director of the Republican Party. The latter was removed and subsequently arrested.

All of these factors created an unstable legislative environment. The Governor vetoed two key measures supported by legislative leadership; an elections bill that re-created campaign leadership funds and an education measure that stripped job protection from teachers and linked teacher pay to testing. In turn, the Florida Senate rejected the Governor's two appointments to the Public Service Commission (PSC), the House of Representatives refused to enact meaningful PSC reform, and the legislature in total challenged executive authority on a wide-range of issues. Given all of this, it is remarkable that the Session ended on-time.

On the budget front, this year's \$70.4 billion spending plan relied on a combination of spending cuts, federal stimulus money, an infusion of more than \$400 million from the

gaming compact with the Seminole Tribe of Florida, and a trust fund sweep of nearly \$600 million. Budget preparations for the 2010-2011 Fiscal Year began with a projected deficit of \$3.2 billion and legislative pledges of no tax or fee increases. The result was a budget that included no municipal support, few local interest projects, a relatively flat amount for public schools, and significant reductions in funding for health and human services. The Governor subsequently vetoed \$371 million from the spending plan, including \$160 million taken from the State Transportation Trust Fund.

A similar dysfunction permeated policy deliberations. The legislature passed the second-lowest number of bills in recent memory and, although somewhat ameliorated, the lamentable practice of demonizing local governments continued.

In the midst of this, I am pleased to report that the City of Coral Gables did remarkably well. My team and I successfully worked to again obtain legislative authorization to replenish the City's general fund from the Special Law Enforcement Trust Fund and secured the opportunity for other funding; obtained legislative approval for Red Light Cameras, Green Corridors, grandfathered local Residency Requirements for Sexual Offenders and Predators; and waylaid initiatives like TABOR. Additionally, we were able to enhance the City's ability to strengthen its municipal authority, preserve the affordability of home and condominium ownership, establish important policy goals, and defeat legislation negatively impacting local governance. Following is a synopsis of items of particular interest to Coral Gables.

## **APPROPRIATIONS**

- Law Enforcement Trust Fund

Section 8 of HB5003 allows a municipality to expend funds in a Special Law Enforcement Trust Fund to reimburse the general fund of the municipality for moneys advanced from the general fund to the Special Law Enforcement Trust Fund prior to October 1, 2001. This language is specific to Coral Gables and we have been able to include it in the Implementing Bill to the Florida Budget most every year.

- Economic Development

CS/SB1752, the comprehensive economic development legislation, creates a "Local Government Distressed Area Matching Grant Program" to provide a matching grant to a local government's contribution or \$50,000, whichever is less, to a business that will create at least 15 jobs and is located in a community suffering from unemployment and general economic distress. The total appropriation is \$3 million. Applications are currently available from the Governor's Office of Trade, Tourism, and Economic Development and are due the first of every month until funding is depleted.

- Stormwater and Wastewater Funding

Line Item 1718 of the Florida Budget appropriates \$163,386,374 to the "State Revolving Loan Fund" to provide below market rate loans to qualified local governments to remove, mitigate or prevent adverse effects on surface or ground water quality and public health. During our representation, Coral Gables has averaged \$940,000 annually in direct legislative funding for stormwater or wastewater projects but this is only the second time in the past 16 years that critical line item support in this area was not appropriated. In last year's End-of-Session report we detailed the modifications to Loan Fund program guidelines that would have to occur for the City to effectively access these dollars. Primary was to ensure that every community has a fair chance to qualify for funding and to expand the qualification for grants so that additional deserving communities may be able to implement their projects. This was successfully done.

- .Florida Forever

Line Item 1686A of the Florida Budget appropriates \$15,000,000 for the Florida Forever program. This is the state's conservation land-buying program and Coral Gables can employ these dollars for the acquisition of land for parks, recreation, open space, and conservation. Applications are currently available and are being accepted until December 31st.

- Florida Main Street Program

Line Item 3070 of the Florida Budget appropriates \$662,450 for Historic Preservation Grants. A part of that appropriation is to be used for the Florida Main Street program which provides funding support at \$10,000 per community as well as technical assistance at a level up to \$60,000 to encourage the revitalization of traditional, historic downtown and neighborhood commercial districts. If interested in pursuing this support, the City of Coral Gables should apply to the Bureau of Historic Preservation, Division of Historical Resources of the Florida Department of State. Applications are currently available and are being accepted until December 15th.

- Advertising Matching Grants Program

Line Item 2664 of the Florida Budget appropriates \$26,647,961 to the Florida Commission on Tourism. A part of that appropriation is to be used for the "Advertising Matching Grants Program" to help communities market themselves as tourist destinations. Municipalities with a population of 50,000 or less are eligible to receive grant awards of \$2,500 per cycle. If interested in pursuing this support, the City of Coral Gables should apply to Visit Florida. Applications will be available beginning in December of this year and are due in February of 2011.

## **LEGISLATION**

### **Transportation**

- Traffic Infraction Detectors (Red Light Cameras)

CS/CS/HB325 authorizes the Department of Highway Safety and Motor Vehicles, counties, and municipalities to use cameras to enforce violations of a driver's failure to stop at a traffic signal.

The legislation requires signage at intersections using traffic infraction detectors, and provides that they may not be used to enforce violations when the driver is making a right turn in a careful and prudent manner. It further provides that notifications and citations to the registered owner(s) of motor vehicles must include the images indicating that the motor vehicle violated a traffic control device, and must offer a physical location or an Internet address where images or video may be reviewed. When a citation is issued, it may be challenged in a judicial proceeding in the same manner as other traffic violations. A contested citation upheld by the court may result in additional court costs and fees.

The penalty for not stopping at a traffic signal is increased from \$125 to \$158 and the distribution to local governments of the revenue collected is \$60.00 when a citation is issued by a law enforcement officer; \$45.00 when the citation is issued by the Department of Highway Safety and Motor Vehicles; and \$75.00 when the citation is issued by a county or municipality. Points may not be assessed against a driver's license and violations may not be used for purposes of setting motor vehicle insurance rates.

A transitional period for those municipalities instituting a traffic infraction detector program on or before July 1, 2011 is provided. No company or individual may receive a commission or per-ticket fee from any revenue collected from violations detected through the use of a traffic infraction detector and a manufacturer or vendor may not receive remuneration based upon the number of violations.

Every governmental entity that operates a traffic infraction detector must submit an annual report to the Department of Highway Safety and Motor Vehicles which details the results of the detectors and the procedures for enforcement.

- Transportation System Surtax for On-Demand Transit Services

Section 1 of CS/CS/CS/HB1271, the omnibus transportation bill, allows that the proceeds of discretionary transportation system surtax can be used for “planning, development, construction, operation, and maintenance of on-demand transportation services.” The legislation further defines “on-demand transportation services” as transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.” This means that the funds received by Coral Gables from the Citizens’ Independent Transportation Trust can also be used to provide on-demand senior and disabled transportation services. Prior to this provision, there was no ability to use CITT dollars for this purpose.

- Camping on the Right-of-Way

Section 23 of CS/CS/CSHB1271, the omnibus transportation bill, prohibits camping on any portion of the right-of-way of the State Highway System within 100 feet of a bridge, causeway, overpass, or ramp. This would prevent any person(s) from living under the Metrorail Overpass since US1 is managed by the Florida Department of Transportation or under any bridge in Coral Gables that is on a state road. The language was intended to prevent a repeat of the Julia Tuttle Causeway situation.

## Public Safety

- Sexual Offenders and Predators

CS/CS/HB 119 creates new restrictions for a person convicted of a sexual offense when the victim was under the age of 18. As originally introduced, the bill would have superseded local residency limits but the version that passed grandfathered local ordinances with regard to residency near schools, child care facility, playgrounds, or parks.

Additionally, the legislation makes it a first degree misdemeanor for an offender to be loitering within 300 feet of a place where children congregate; makes it a first degree misdemeanor for an offender to approach, contact or communicate with a child under 18 in any public park building or playground with intent to engage in conduct of a sexual nature or to make a communication of a sexual nature; and, makes it a first degree misdemeanor for an offender to be in any child care facility or pre-K-12 school unless he or she has provided written notification.

The legislation also defines the term “transient residence” in the sexual predator and sexual offender registration statutes and requires an offender to provide information regarding his or her transient residence during the registration process. An offender may

not be forced to move if he or she is living in a residence that complies with the residency restrictions and a school, child care facility, playground or park is subsequently established within the boundaries of such restrictions.

The bill also prohibits offenders from distributing candy to children on Halloween, wearing specified costumes, or entertaining at children's parties without prior approval of the sentencing authority.

- Community Residential Homes

SB1166 is of limited application to Coral Gables since it defines a "planned residential community" as a local government approved planned unit development which is under unified control; is planned and developed as a whole; has a minimum gross lot area of eight acres; and has amenities that are designed to serve residents with a developmental disability. However, this legislation served as an mandatory vehicle to protect residential neighborhoods from the clustering of "SOBER Living Homes." These are alcohol and drug treatment residential facilities, mostly located in single-family neighborhoods, which as a consequence of the American with Disability Act (ADA) are exempt from local planning and zoning regulations. There has been a proliferation of these as out-of-state operators purchase distressed properties to house recovering addicts. At our urging, language requiring a distance of 1,000 feet from one SOBER Home to another was included by Rep. Kelly Stargel in CS/CS/HB 645, the House companion to SB1166, and Sen. Thad Altman attempted to incorporate an identical provision on his bill. The amendment was twice defeated on the floor of the Senate, but as a consequence of this effort the Florida Department of Children and Families has created a workgroup to examine SOBER Homes and recommend legislative changes to license and regulate them and to protect residential neighborhoods.

- Misrepresentation of Military Status

CS/HB155 amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of or represents any branch of the United States Armed Forces in connection with the planning, conduct, or execution of any solicitation or charitable contribution.

- Threats

CS/HB317 adds the term "electronic communications" to Section 836.10, F. S., so that any threats to injure or kill a person sent electronically would be punishable by a second degree felony.

- Public Safety Telecommunications

CS/CS/CS/SB742 creates a mandatory certification program for 911 public safety telecommunicators, whose job duties include answering, receiving, and transferring 911 calls, or dispatching emergency services. The bill provides for education and training standards, continuing education, discipline, fees and rulemaking authority. After October 1, 2012, individuals seeking certification must complete a 232-hour training program approved by the Department of Education, and pass an examination administered by the Department of Health.

## **Dwellings**

- **Building Safety**

CS/CS/CS/CS/HB663, which passed on the final day of the Session, revises various laws regarding building safety. Particularly, the bill limits requirements for condominiums to retrofit elevators for Phase Two Firefighter Services until July 1, 2015, or previous to that if an elevator is replaced or requires major modifications. This is intended to reduce the financial burdens of condominium owners during the current economic downturn.

- **Community Associations**

CS/CS/CS/SB1196 lowers the cost of owning a condominium by repealing the requirement to purchase individual unit owner insurance coverage, providing that certain low-rise condominium buildings with exterior corridors need not install a central fire alarm system, amending provisions relating to fire sprinklers, providing for additional forms of bulk communications contracts, and allowing associations to waive the requirement to provide alternative power supplies to elevators and alarms during emergencies.

Previously, the law required older multi-family residential structures to retrofit units and common areas with fire sprinklers by 2012. It also provided that condominiums associations (by unit owner vote) could forever waive retrofitting of sprinklers in unit interiors, forever waive retrofitting of common areas in shorter buildings, and delay retrofitting of common areas in high-rise buildings until 2014. This bill allows the owners in a high-rise condominium to vote to forever waive retrofitting of the common areas with fire sprinklers, just like owners in shorter buildings are allowed. Additionally, the time for condominium associations who do not vote to forego retrofitting of either unit interiors or the common areas to comply with retrofitting requirements is extended from 2014 to 2019, and requires such associations to complete planning and permitting by 2016.

Through our involvement, Coral Gables has been an integral part of City of Miami Beach Vice Mayor Jerry Libbin's legislative campaign with regard to delinquent assessments owed to condominium associations at the time of foreclosure. This bill begins to address that by changing the amount of money banks owe to condominium associations from 6 months of a unit's unpaid common expenses and regular periodic assessments or 1% of the original mortgage balance, whichever is less, to 12 months of a unit's unpaid common expenses and regular periodic assessments or 1% of the original mortgage balance, whichever is less.

- **Qualifying Improvements to Real Property**

CS/HB7179 authorizes local governments to levy voluntary non-ad valorem assessments to fund energy efficiency, renewable energy, and wind resistance improvements for property owners. It grants local governments the authority to issue debt, payable from revenues received from the improved properties, and to partner with one or more local governments. More commonly known as Property Assessed Clean Energy (PACE) the municipalities of Coral Gables, South Miami, Pinecrest, Palmetto Bay, and Cutler Bay were the key supporters in having this legislation approved.

- **Residential Fire Sprinklers**

CS/CS/CS/SB846 prohibits local governments from requiring the installation of automatic fire sprinklers in newly constructed one-family and two-family residential dwellings and townhouses. The bill further prohibits a local government from requiring a property

owner to install fire sprinklers in any residential property based on its use or reclassification as a rental property.

- Citrus Canker Eradication

HB1013 removes all mention of the citrus canker eradication program from Florida Statutes. This puts a definitive end to the program.

- Tower Cranes

SB1174, which would have pre-empted the regulation of hoisting equipment to the state, did not pass. This has been an issue in Coral Gables for a number of years.

### **Public Employment**

- Insurance

CS/CS/SB 2176 makes changes to various insurance laws. Of specific application to Coral Gables is a provision dealing with the Disability Presumption for Law Enforcement Officers. Current law establishes that certain diseases (tuberculosis, heart disease, and hypertension) acquired by an officer is presumed to have been suffered in the line of duty. The bill provides that a law enforcement officer who suffers from one of the enumerated diseases and materially departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, loses the presumption for claims after July 1, 2010.

- Public Retirement Plans

HB1319 and SB1902 sought to make changes to how municipal retirement plans are offered, organized, funded and administered. These bills were in response to the dire financial straits faced by most local governments and the fact that pensions account for about 10% of municipal budgets. Because of shrinking tax revenues and investment losses, many cities are experiencing pension shortfalls and having to allocate general revenue to meet this obligation.

Neither of the bills passed, but the Senate has indicated that an "Interim Report" will be conducted to recommend legislative changes on how to more align public retirement plans with those offered by private employers. Additionally, Florida TaxWatch has assembled a 36 member task force on government cost savings with pension reform being at the top of its agenda. After the November elections, with a new Governor and a different Legislature, pensions are likely to get a major overhaul.

Some of the items under consideration are authorizing municipalities include modifying membership requirements for municipal Board of Trustees, increasing requirements for police officer and firefighter member contributions, tying pension increases to the consumer price index, calculating pensions only on base salary, and increasing the retirement age.

### **Taxes**

- Local Revenue Restrictions/TABOR

SJR2420 by incoming Senate President Mike Haridopolos called for a Constitutional Amendment to limit state and local government revenues. There was no companion in the House of Representatives. When the bill was heard in its first committee of

reference, Sen. Haridopolos amended it to only limit state, and not local government revenues. The bill was not subsequently considered. It will again be on the legislative agenda next year. Our report from last year details how passage of TABOR would eviscerate Coral Gables' ability to operate an effective government.

- Online Hotel Tax Collections

HB1231 and SB2436 would have overturned efforts to require online travel firms to pay sales and tourist related taxes on the full price of rooms they book. The bills would have defined an internet reservation service provider in a manner as to not require them to remit said taxes.

- Tax on Communications and Utility Services

CS/SB2024 reduces the rate of the communications service tax from 6.8% to 6.65%. This reduction will reduce local government revenues, on a statewide basis, \$2.3 million in the 2010-11 Fiscal Year and \$2.5 million on an annual recurring basis.

- Taxation

CS/HB5801 directs the Department of Revenue to develop and implement an amnesty program for taxpayers subject to state and local taxes. The Revenue Estimating Conference calculated that new revenues to local governments will be, on a statewide basis, \$7.1 million in the 2010-11 Fiscal Year and that \$1.9 million of that will be on an annual recurring basis.

### **Erosion of Local Authority**

- Growth Management

Section 46 of SB1752 stipulates that a development order issued by a local government and local government building permits that have an expiration date from September 1, 2008 to January 1, 2012 are extended for a period of two years after their previously scheduled date of expiration. If a permittee, however, is in significant non-compliance after a warning letter or other formal enforcement, then the extension does not apply. Finally, the bill makes clear that any permit extension does not impair the authority of a county or municipality to require the owner of a property receiving an extension to maintain the property in a safe and sanitary manner.

- Sovereign Immunity

CS/SB260 raises the limited waiver of sovereign immunity applicable to the state, its agencies, and subdivisions from \$100,000 per individual claim and \$200,000 per aggregate claims to \$200,000 per individual claim and \$300,000 per aggregate claim on the collectability of any tort claim.

- Local Government Prompt Payment Act

CS/HB1157 revises provisions in Florida's Local Government Prompt Payment Act relating to the timely payment for purchases of construction services, the notification and completion of the list of items required to satisfactorily complete the construction services purchased by a local government (generally known as a "punch list"), and the resolution of disputes. The legislation has been worked on for several years by lobbyists for local governments and its most onerous aspects were removed. In summary, contractors are

now required to send to a local government an overdue notice for payment. If the notice is not rejected by the local government within four business days after delivery, the payment request is deemed accepted except for any portion that may be misleading. The local government must identify a single employee or facility to which the contractor submits its payment request and can reject the payment request within 20 days after receipt.

- Outdoor Advertising

CS/CS/CS/HB1271 amends the statute concerning outdoor advertising but does not preempt local regulation of outdoor advertising, including billboards, bus benches, or signs.

- Bert J. Harris Act

No legislation was filed that weakens or removes the sovereign immunity provisions in the Bert J. Harris Act.

- Public Records and Public Meetings

SB1598 would have required all elected and appointed officials to undergo ethics and Sunshine Law training and would have eliminated most charges for the public to inspect and copy public documents if it took less than 30 minutes of agency resources. This bill did not pass.

My team and I are privileged to represent Coral Gables and are proud of our history of success. Please be assured that we will follow all of the budget and policy items and their implementation and keep you abreast of any developments. As always, please do not hesitate to contact me if you have any questions or desire additional information.