

Penny IV – Economic Development Capital Projects and Housing

Joint Review Committee Organizational Meeting

December 3, 2018



Welcome and Introductions

Agenda

Part 1:

- **Penny Overview**
- **Joint Review Committee (JRC) Purpose**
- **Appointment of JRC Members Discussion**

Part 2:

- **Facilitated Session for Municipalities sharing a JRC Seat**

Penny IV ED & Housing Overview



Ordinance and Ballot Language

BALLOT TITLE: Ten (10) Year Extension of the Penny for Pinellas One-Cent (1¢) Infrastructure Sales Surtax

BALLOT QUESTION: Shall the levy of the Penny for Pinellas one-cent (1¢) local infrastructure sales surtax be extended for an additional ten (10) years to finance county and municipal projects, including roads, bridges, flood and sewer spill prevention, water quality, trails, parks, environmental preservation, public safety facilities, hurricane sheltering, vehicles, technology, **land acquisition for affordable housing, capital projects supporting economic development (pursuant to section 212.055(2)(d)3, Florida Statutes)**, and other authorized infrastructure projects.

Penny IV ED & Housing Overview



Florida Statute on use of Penny for Affordable Housing (212.055(2)(d)1.e.)

Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

Penny IV ED & Housing Overview



Florida Statute on use of Penny for ED (212.055(2)(d)3)

Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies; ~~including the funding of operational costs and incentives related to economic development.~~ The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Penny IV ED & Housing Overview



Interlocal Agreement Excerpts

"Economic Development Capital Projects" as authorized in Section 212.055(2)(d)3., Florida Statutes and "Housing" (Land Acquisition in support of residential housing as authorized in Section 212.055(2)(d)1.e., Florida Statutes

8.3% of Net Proceeds

Penny IV ED & Housing Overview



Penny IV Projection (2020-2030) (estimated July 28, 2017)

	<u>Allocation</u>	<u>Estimate</u>
<u>Countywide Investments</u>	11.3%	\$225M
Jail & Court Facilities (Annual Renewal & Replacement)	3.0%	\$ 60M
Economic Development Capital Projects and Housing	8.3%	\$165M
<u>Balance Split County/Municipalities</u>	100.0%	\$1.8B
County	51.8%	\$915M
Municipalities	48.2%	\$853M
Total Estimated Revenue		\$2.0B

Penny IV ED & Housing Overview



Interlocal Agreement Excerpts

- Net Proceeds dedicated to Economic Development Capital Projects and Housing shall be used in accordance with guidelines set forth by a joint review committee established by resolution of the Board of County Commissioners.
- The committee may impose reporting requirements to ensure compliance with Section 212.055(2)(d)3., Florida Statutes.
- Economic Development Capital Projects shall be limited to capital projects that support job retention and creation.

Penny IV ED & Housing Overview



Purpose of Joint Review Committee (JRC):

- **Must develop guidelines for the use of the Penny IV proceeds.**
- **May establish reporting requirements.**
- **County staff believes there is need for continuing oversight, advisory and related roles for JRC.**

Questions and Answers

Polling Question

What type of committee do you believe we should establish?

- 1. Limited purpose, short-term committee to develop guidelines and (optionally) reporting requirements.**
- 2. Long-term standing committee to develop guidelines and reporting requirements, and remain in advisory or related role to Board of County Commissioners.**

The State of Florida's “Sunshine Law”

**and
its applicability to the
Economic Development Capital Projects and
Housing Joint Review Committee**

Florida Statute 286.011: *The “Sunshine Law”*

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The Sunshine Law applies to appointed or elected boards (AGO 73-223), as well as those created by interlocal agreement (AGO 84-16). Specifically, it applies to:

- Final decision-making boards
- **Advisory boards with decision-making authority (*Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 S.3d 755, 762 (Fla. 2010))**
 - Recommendations constitute “decision-making” (*Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694)
 - Fact-finding exception: advisory boards vested with only pure fact-finding or information-gathering authority are exempt from the Sunshine Law.
- **Staff committees if staff has been vested with decision-making authority (*Wood v. Marston*, 442 So.2d 934 (Fla.1983))**
 - Examples: narrowing down an issue, or ranking proposals on behalf of a Sunshine body
 - It is the nature of the acts performed that govern, rather than the makeup of the committee

“Meeting” (*Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973)):

➤ Any gathering, whether formal or casual

- Official board meetings, workshops, organizational sessions
- Verbal conversations (phone, Skype)
- Two-sided written correspondence (email /text/Facebook/Twitter/ blogs)
- De facto (use of staff or other liaisons to effect a discussion between members)
- Fact-finding-investigative trips by boards with final decision-making authority, or trips by advisory boards if discussions ensue regarding matters that will foreseeably come before the board

➤ Of two or more members of the same board

➤ To discuss some matter on which foreseeable action could be taken by the board.

Substance over form

Meeting Requirements

➤ Reasonable notice

- Reasonableness depends on the nature of the meeting
- Must provide the media and general public a reasonable opportunity to attend

➤ Reasonable opportunity to be heard (F.S. 286.0114(2))

- Allow public comment on any proposition before a board or commission

➤ Accessible:

- Must be held in facilities that do not discriminate or unreasonably restrict access

➤ Minutes:

- Minutes must be taken and promptly recorded
- A verbatim record is not required

Violations

➤ Penalties

- Anyone who knowingly violates the Sunshine law is guilty of a Second Degree Misdemeanor, which allows for a \$500 fine and up to 60 days in jail. Florida Statutes, Sections 286.011(3)(b), 775.082(4)(b), 775.083(1)(e).
- Removal from office is an alternative inclusive penalty.
- A board found guilty will be subject to paying the attorney fees of the member of the public challenging the Board action.
- Any action taken by the board in violation of the Sunshine law is void.

➤ Opportunity to Cure

- Where a board does not merely perfunctorily ratify or ceremoniously accept at a later or open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the Sunshine," the decision of the board or commission will not be disturbed." *Tolar v. School Board of Liberty County*, 398 So.2d 343 (Fla. 1979).

Exceptions

- **Collective bargaining**
- **Risk Management programs**
- **Security systems**
- **Pending litigation – Section 286.011, F.S.**

Announce in advance

Court reporter

Scope – “settlement negotiation” or strategy session related to litigation expenditures

Limited attendance

Open and close in public meeting

Joint Review Committee



The Joint Review Committee will be a Sunshine body as a matter of law.

➤ **Membership:** Committee will constitute a “board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision...” as it is made up of representatives of the County and municipalities within the County, and it will serve on behalf of the Board of County Commissioners.

➤ **Authority:** The Joint Review Committee is vested with the authority to recommend guidelines for expenditure of Penny IV Funds for economic development and housing projects, which will then be subject to final review and approval by the Board of County Commissioners.

➤ Advisory body : will serve on behalf of the BCC

➤ Decision-making: will have authority to make recommendations, as opposed to limited to mere information-gathering or fact-finding

➤ Advisory body + decision-making authority = subject to the Sunshine Law

Joint Review Committee



The following are examples of “meetings” subject to the Sunshine Law:

- Discussions among the internal staff employed by the same jurisdiction who also serve on the Committee, regarding projects or other matters that will foreseeably come before the Committee. (Pinellas County and St. Petersburg.)**
- Discussions between staff of one jurisdiction and their counterparts in other jurisdictions that serve on the Committee regarding projects or other matters that will foreseeably come before the Committee.**
- Discussions of staff not on the Committee with a member of the Committee, communicating information from another member of the Committee, regarding projects or other matters that will foreseeably come before the Committee.**

Joint Review Committee



The scope of the Sunshine Law implications will depend on how the guidelines are structured and the ongoing role of the Committee:

Option A: Committee only develops guidelines → meetings of members after adoption of guidelines will not be subject to the Sunshine Law.

Option B: Committee develops guidelines that involve ongoing Committee review and recommendation of projects → meetings of members to discuss matters which will foreseeably come before the Committee will continue to be subject to the Sunshine Law.

Summary

- Purpose of the Sunshine Law: protects transparency and open access to the government.
- “Meeting”: two or more members of the same public body discussing a matter that will foreseeably come before said body.
- Meeting requirements: publically noticed, accessible to the public, provide a right for the public to be heard, and recorded minutes.
- The Joint Review Committee
 - Sunshine body as a matter of law.
 - Discussion among staff who will serve on the Committee (including through intermediaries) regarding matters likely to come before the Committee will be subject to the Sunshine Law.
 - The established guidelines will impact how certain staff members of the same or differing jurisdictions must operate in light of the Sunshine Law.

Questions?

Joint Review Committee (JRC)



Interlocal Agreement Excerpts

- The committee shall consist of professional staff with subject matter expertise in economic development, planning, and/or housing.
- Committee membership shall be comprised of:
 1. Three (3) professional staff members representing the County and appointed by the County Administrator
 2. Two (2) professional staff members representing the City of St. Petersburg and appointed by the Mayor of the City of St. Petersburg.

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Joint Review Committee (JRC)



3. Single professional staff member, appointed by the city's manager or elected body, of each of the cities as noted below:

- One (1) member representing Clearwater;
- One (1) member representing Dunedin;
- One (1) member representing Largo;
- One (1) member representing Pinellas Park;

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Joint Review Committee (JRC)



- One (1) member representing Belleair, Belleair Bluffs, Gulfport, Kenneth City, Seminole, and South Pasadena;
- One (1) member representing Belleair Beach, Belleair Shore, Indian Rocks Beach, Indian Shores, Madeira Beach, North Redington Beach, Redington Beach, Redington Shores, St. Pete Beach, and Treasure Island; and
- One (1) member representing Oldsmar, Safety Harbor, and Tarpon Springs.

Appointing Committee Members



What you need to do:

Municipalities with their own seat - Provide appointment in writing to PCED by January 18th

Municipalities with shared seat – Determine appointee and method to transmit to PCED by January 18th

JRC Next Steps

- 1. Initial Meeting in February 2019**
- 2. Create guidelines by August 2019**
- 3. BCC adopt guidelines by resolution by September 2019**



Questions

Three seats with multiple jurisdictions

Questions for Break Out Session



For our shared seat, how will we determine who will be the appointed committee member?

On the appointment letter, who will be the primary signature (Elected Body or City Manager)?

How do we document agreement on the appointed member by all municipalities to provide to PCED?

Will there be a rotation of appointees? If so, how will we do that? What would be the length of term?

In the future, how will we communicate with each other for combined input?



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