

# STETSON LAW REVIEW

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## LOCAL GOVERNMENT LAW SYMPOSIUM

### INTRODUCTION

In the exercise of their power, governments must strive to balance the need for regulation to protect their residents against the requirement that their actions do not become unduly burdensome. The past year has seen many changes in the way governments conduct their business. While legislation and case law in some areas have restricted the powers granted to government, particularly in the land use area, governments must continue to regulate activities within their jurisdictions in order to protect their residents. The Twelfth Edition of the Local Government Law Symposium focuses on the powers granted to governments, with particular attention to local governments, and recent legislation and case law affecting the exercise of those powers.

This Edition's first article presents a proposal for the expansion of governmental regulation in the area of service contracts. Kenneth E. Spahn discusses the service contract industry and the need for consumer protection in *Service Warranty Associations: Regulating Service Contracts as "Insurance" Under Florida's Chapter 364*. Mr. Spahn compares the purchase of service contracts for a variety of consumer goods to the purchase of insurance and sets forth the rationale for concluding that service contracts are a form of insurance properly regulated by the Department of Insurance.

Although the courts have placed some restrictions on governments' exercise of their powers, Robert Lincoln states that local governments' general lawmaking powers require the imposi-

tion of limitations and that the courts are unable to place such limits. In *Executive Decisionmaking by Local Legislatures in Florida: Justice, Judicial Review and the Need for Legislative Reform*, Mr. Lincoln analyzes the current administrative, quasi-judicial and legislative powers of local government and the lack of controls on the exercise of the power. Unlike state and federal governments which are subject to a myriad of restrictions, Mr. Lincoln states that the potential for widespread abuse is present in local governments due to the inadequate controls on their exercise of power. Due to the lack of a framework in which to review local government actions, Mr. Lincoln concludes that courts are unable to restrict local governments and calls for the State legislature to limit local governments' exercise of their power and provide a consistent means of reviewing actions of local governments.

In recent years, the court system has also seen an increase in legal challenges to annexation. As counties have begun to provide essential services, property owners are negotiating with cities and counties in order to obtain the best deal for development of their property. In *A Practical Perspective About Annexation in Florida*, Alison Yurko describes voluntary annexation, involuntary annexation, annexation by special act and annexation by charter from the perspective of a city, a county, and a property owner. Ms. Yurko describes issues and challenges which may arise during the annexation process and sets forth the elements which should be included in joint planning area agreements between cities and counties in order to avoid such challenges.

The United States Supreme Court decided the case of *Dolan v. City of Tigard* this past year which defined the requirements governments must meet in the imposition of development exactions. Nancy E. Stroud and Susan L. Trevarthen conduct a review of recent case law in the land use regulation area leading up to and including *Dolan* and discuss the limitations that courts have placed on governments in *Defensible Exactions After Nollan v. California Coastal Commission and Dolan v. City of Tigard*. Ms. Stroud and Ms. Trevarthen conclude that, although limitations have been placed on local governments' ability to impose land use exactions, restrictions which are reasonable and uniformly applied will be upheld.

The power of governments to condemn property for use by the

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general public was also affected this year when the Florida Supreme Court limited evidence that could be admitted at a valuation trial in *Finkelstein v. Department of Transportation*. In *Relevance and Admissibility of Evidence of Environmental Contamination in an Eminent Domain Valuation Trial*, Robert N. Sechen analyzes the court's rationale in the *Finkelstein* case and concludes that the court erred in excluding the entry of remediation costs while holding that evidence of present or future contamination of the property is admissible in an eminent domain trial. Mr. Sechen further notes that all relevant evidence should be admissible in a valuation trial.

With the topics discussed in this Edition, the symposium continues to be at the forefront of issues involving government law. The Symposium welcomes your ideas and contributions for future editions.

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