

# Charlotte County, Florida 2021 Federal Legislative Agenda

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**Prepared by Thorn Run Partners for the  
Charlotte County Board of County Commissioners**

**Commissioner Chris Constance  
Commissioner Stephen R. Deutsch  
Commissioner Ken Doherty  
Commissioner Joe Tiseo  
Commissioner Bill Truex**

**Questions regarding the information in this book may be directed to:**

**Greg Burns  
(202) 849-8523**

**Cameron Pennant  
(941) 743-1944**

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## Charlotte County, Florida 2021 Federal Legislative Agenda

### 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. *Monitor* FEMA's implementation of the Risk Rating 2.0 program.

#### **Fiscal Year 2022 Appropriations: Charlotte County, FL Shoreline and Inlet Management**

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*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* an appropriate number of "new starts" for studies so the Manasota Key shoreline study may be initiated via the Corps of Engineers Work Plan to address sediment management and erosion of beaches, and to provide for safer navigation.

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*Support* efforts to secure funding for Charlotte County sewer system expansion. *Support* efforts to encourage the Corps of Engineers to determine that the modification to the Charlotte County WRDA authorization are "necessary" and then work with the Corps and Congress to fund contributions to the County's septic to sewer program.

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*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, construction of the Everglades Agricultural Area reservoir, 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.

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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 identify areas across the nation most at risk of flooding, minimize the economic impact of flooding events through floodplain management ordinances, and 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.

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 changes to the program that impacted the Island's residents. Then, in early 2014, the Homeowner Flood Insurance Affordability Act (HFIAA), was enacted to address some of the so-called unintended consequences of BW12. While HFIAA delayed many of the premium increases implemented by BW12, 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 will expire on September 30, 2021. In Charlotte County, there are roughly 35,000 NFIP policies for both homes and commercial properties.

*116<sup>th</sup> Congressional Approach*

In 2019, House Financial Services Committee Chair Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) released a compromise bill to reauthorize the NFIP for five years, among other things. Given that the bill was a compromise, it was less consumer-friendly or far-reaching than the bills that Chairman Waters released on her own before then. While the compromise bill unanimously passed the Committee, it never saw action on the House floor and the Senate never took any action on the reauthorization of the NFIP. The House bill faced stiff criticism from several Senators who argue that the bill's consumer protections were not robust enough and did not do enough to keep rates affordable, particularly with FEMA's Risk Rating 2.0 initiative looming.

*117<sup>th</sup> Congressional Approach*

Future discussion of long-term reauthorization of the NFIP remains murky, but is likely to be worked on over the next two years, with a modified version of the House bill from 2019 expected to be reintroduced at a minimum.

*Risk Rating 2.0*

"Risk Rating 2.0" is expected to dramatically change the way the NFIP prices flood policies and is expected to be released in April 2021 and go into effect in October 2021. All 5 million NFIP policyholders are expected to have new policy premiums under the new system, although not all will be negative. Among the new changes impacting policy prices will be the cost of rebuilding an insured structure, the potential impact of different types of flooding, and the distance of a property to a coast or river. It will also introduce new sources of flooding, such as intense rainfall, that have not previously been considered in the NFIP. Risk Rating 2.0 could create policy premiums that will remind policyholders of increases faced after passage of the Biggert-Waters NFIP reauthorization in 2012.



POSITION: *Support* efforts to improve the National Flood Insurance Program for the benefit of all participants.  
*Monitor* FEMA's implementation of the Risk Rating 2.0 program.



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FEDERAL ISSUE: Fiscal Year 2022 Appropriations: Charlotte County, FL 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 new study 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.

After several attempts at securing funding for the study via various supplemental appropriations bills passed by Congress that provided additional funding for the Corps of Engineers to respond to hurricanes and other natural disasters, the Corps advised the County that it should submit the project for new study authorization. This occurs by submitting a request to the Corps during their "Report to Congress on Future Water Resources Development" process. The County submitted such a request as advised in August 2020 and are awaiting the release of the new report that may allow for funding of the study effort via the appropriations process. 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." Funding for the study would be sought via the FY 2022 Corps of Engineers Work Plan.

*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* an appropriate number of “new starts” for studies so the Manasota Key shoreline study may be initiated via the Corps of Engineers Work Plan to address sediment management and erosion of beaches, and to provide for safer navigation.





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FEDERAL ISSUE: Water Resources Development Act: 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.

To potentially provide the County with federal assistance for its efforts, the County submitted a Water Resources Development Act (WRDA) request to amend its exiting Army Corps of Engineers "environmental infrastructure" authorization that had yet to be utilized so that future funding could be used to support the ongoing septic to sewer conversion project. In 2018, our request was included in the Senate version of WRDA but was dropped in conference and was not included in the final bill (no requests like ours were included at that time).

Congress completed work on a 2020 version of WRDA and included our request in a modified version – essentially a slightly alternate version of what we requested. Specifically, the language related to our request is as follows:

*FEASIBILITY ANALYSIS.—*

*IN GENERAL.—Subject to the availability of appropriations, the Secretary is authorized to review a project proposal described in paragraph (2) and issue a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on whether a modification to the project that is the subject of the proposal is necessary and recommended to carry out the authorized purposes of such project.*

*PROJECT PROPOSALS DESCRIBED.—A project proposal referred to in paragraph (1) is a proposal to modify any of the following:*

*(C) The project for environmental infrastructure, Charlotte County, Florida*



This language gives the County an opportunity to petition the Corps to determine that the modification to our authorization is “necessary” and then work with the Corps and Congress to proceed and fund contributions to the County’s septic to sewer program. While we had hoped that Congress would simply modify our authorization, they did not do that for any projects nationwide and instead lumped everyone who asked (a handful of other projects) into this scenario.

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* efforts to encourage the Corps of Engineers to determine that the modification to the Charlotte County WRDA authorization are “necessary” and then work with the Corps and Congress to fund contributions to the County’s septic to sewer program.



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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 20<sup>th</sup> 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.

\$250 million in federal funding for the Everglades program was included in the Fiscal Year 2021 Energy & Water Appropriations bill passed by Congress in December, providing the most significant boost in funding to the program in many years.

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 and accepted written comments in 2019. Since then, they have hosted roughly monthly Project Delivery Team meetings to develop alternative options for management of the Lake. The Corps anticipates having a final report completed by the end 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, construction of the Everglades Agricultural Area reservoir, 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.



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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 15<sup>th</sup> 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 2021 appropriations process, \$2 million was allocated to the Centers for Disease Control to study, mitigate, and respond to harmful algal blooms. The Florida delegation 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: Waters of the United States

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In January 2020, the Environmental Protection Agency (EPA) and Army Corps of Engineers (USACE) announced the Navigable Waters Protection Rule, which was the latest effort to define “Waters of the United States” (WOTUS). This came after President Trump signed an executive order directing the EPA and the USACE to review President Obama’s 2015 Clean Water Rule and rescind or revise that rule. The Trump-era rule rolls back the number of water bodies subject to federal regulatory oversight and went into effect in June 2020.

*Navigable Waters Protection Rule*

The Trump WOTUS rule aims to differentiate federally and state protected wetlands, yet clearly decrease federal regulatory authority to a greater extent than the rule which existed before the 2015 Obama-era proposed rule, which was never fully implemented. The new definition identifies four distinct categories that will be regulated under the Clean Water Act:

- 1) Territorial seas and traditional navigable waters;
- 2) Perennial and intermittent tributaries;
- 3) Certain lakes, ponds, and impoundments; and
- 4) Wetlands adjacent to jurisdictional waters.

While these four categories are subject to federal regulation, the rule also details what waters cannot be federally regulated:

- Features that only contain water in direct response to rainfall;
- Groundwater;
- Many ditches, including most farms and roadside ditches;
- Prior converted cropland;
- Farm and stock watering ponds; and
- Waste treatment systems.

Waterways that are exempt from federal regulations are subject to regulations by states, localities, and tribes. Republicans generally praise the Trump WOTUS rule while Democrats have expressed concerns, claiming the new rule will eliminate federal regulation on 18 to 71 percent of streams and river miles and over 50 percent of wetlands.

*Future of WOTUS Rule*

Recently, House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) penned a letter to the President requesting he completely revoke the Trump administration’s *Navigable Waters Protection Rule*, citing it “causes lasting damage to the health of” families, environment, and water sources. In the letter, Chairman DeFazio encouraged the Biden administration to work with key stakeholders, including environmental, agricultural, and business communities, and municipalities to establish a new rulemaking.

The Biden administration began the process to rescind the rule through executive action, which revokes the 2017 Trump administration action reversing the Obama-era WOTUS rule and reviews the Trump administration’s definition of federal waters. Meanwhile, the administration has sought to freeze WOTUS litigation to give the EPA and the Army Corps of Engineers time to consider a new ruling.



EPA administrator nominee Michael Regan appeared before the Senate Environment and Public Works Committee during his confirmation hearing and may have eased some Republican anxiety over the fate of the Trump-era WOTUS rule. As the head of the North Carolina's Department of Environmental Quality, Regan described how he had to manage compliance with the two prior iterations of the WOTUS rule. He pledged that to hear from all stakeholders in the development of a new rule to ensure any final regulation is clear and understandable, and aims to not be overly burdensome.

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



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FEDERAL ISSUE: Energy Exploration

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Active energy drilling currently occurs in both the western and central Gulf of Mexico, while nearly the entire eastern Gulf is protected from drilling by Presidential memorandum until 2032.

In September 2020, President Trump signed a memorandum withdrawing the eastern Gulf of Mexico and Atlantic coast of Florida from exploration, development, or production of energy through June 30, 2032. The memorandum also covers the Atlantic coast of Georgia and South Carolina and was later expanded to include the coast of North Carolina.

The federal government typically develops five-year Outer Continental Shelf (OCS) Oil and Gas Leasing programs to guide energy exploration activities in federal waters. The Biden Administration will at some point develop a new five-year exploration plan. Such a plan is unlikely to include significant new drilling for any OCS areas other than maybe in the central and western Gulf of Mexico.

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



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FEDERAL ISSUE: Infrastructure Investment

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The 2020 (and 2021) federal elections created a scenario where an infrastructure package is more likely than previously thought. With Democrats controlling the House, Senate, and White House, Congress could use the relatively arcane budget reconciliation process to pass a large bill combining an infrastructure package, tax items, and issues relating to green energy and climate change in 2021.

While we do not know exactly what this may look like, it could build off what the House proposed during the last Congress, the \$1.5 trillion Moving Forward Act (H.R. 2 in the 116<sup>th</sup> Congress) plus additional items from Biden's Build Back Better plan as well as the House Select Committee on the Climate Crisis' Action Plan.

- The Biden Build Back Better plan, while light on specifics, is larger than the Moving Forward Act with a \$2 trillion price tag and is also broader, with investments suggested to help reduce the carbon footprint of the auto industry, the agricultural sector, and the power sector.
- The House Select Committee on the Climate Crisis produced a 547-page Action Plan that is much broader than just infrastructure, but also complements the other two plans with a variety of climate policy recommendations, many of which are focused on improving community resilience.

Based on prior experience, most federal infrastructure investments are likely to utilize existing programs and funding streams. However, some new programs and opportunities will also be created.

The infrastructure package could include:

- New investments in highways, roads, rail, schools, and bridges;
- Renewed focus on workforce development;
- Invest in the transition to low- and zero-carbon vehicles;
- Promote clean water by way of waterway improvement and water infrastructure investment;
- Bolster the nation's broadband infrastructure to reach underserved communities;
- Invest in climate resiliency, adaptation, and clean energy infrastructure.

POSITION: **Support** the passage of a long-term surface transportation authorization bill. **Support** new federal investment in infrastructure. **Support** all opportunities to secure funding for Charlotte County's infrastructure priorities.





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FEDERAL ISSUE: COVID Pandemic Response and Recovery

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: To respond to the ongoing COVID-19 pandemic, Congress has passed four bills costing nearly \$3 trillion to help address a host of public health and economic challenges facing the country. While the third bill, the CARES Act provided \$150 billion to states and local governments with more than 500,000 people, the bill did little for smaller local governments who also face significant revenue shortfalls.

Many in Congress have fought for funding for all local governments, with the newest COVID package being considered in Congress, the American Rescue Plan including \$350 billion that would provide Charlotte County with a direct payment of \$36.9 million should it become law.

Meanwhile, several iterations of the Paycheck Protection Program, a litany of programs to support individuals, and expanded unemployment payments have been created to help keep people afloat during the pandemic. Bills have also been introduced in Congress to assist industries that are struggling yet have been unable to fully tap into other federal programs for consistent support. For example, bi-partisan, bi-cameral pieces of legislation like the RESTAURANTS Act and the RESTART Act would both focus relief on restaurants, with the latter bill focusing on other industries like hotels, too. It is possible that either could be folded into ongoing COVID-19 response packages or that other legislative solutions could be crafted that aim to positively impact such industries.

POSITION: **Support** additional direct federal assistance to all local governments via another COVID-19 response package and ensure such funding can be used to cover revenue losses. **Support** other federal efforts to restore the economy, including efforts to assist individuals and small businesses hit hard by the pandemic.



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FEDERAL ISSUE: Medicaid Inmate Exclusion Policy

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Medicaid Inmate Exclusion Policy (MIEP) is a federal policy that strips federal health and veterans benefits from individuals upon admission to jail. The Social Security Act (Sec. 1905(a)(A)) prohibits the use of federal funds and services for medical care or other benefits provided to “inmates of a public institution,” including those run by counties. The MIEP does not differentiate between a convicted inmate and a person incarcerated prior to conviction and contributes to the national behavioral and mental health crisis as well as rates of recidivism in our local jails.

In the 116<sup>th</sup> Congress, there were two bills introduced in the U.S. Senate that would address the MIEP. Senators Ed Markey (D-Mass.), Merkley (D-Ore.), Brown (D-Ohio) and Durbin (D-Ill.) introduced S. 2628, the Equity in Pretrial Medicaid Coverage Act. This legislation would amend Title XIX of the Social Security Act to remove a limitation on an individual’s eligibility for medical assistance under the State Medicaid plan while the individual is in custody pending disposition of charges. Additionally, Senator Merkley (D-Ore.) introduced S. 2626, the Restoring Health Benefits for Justice-Involved Individuals Act of 2019. This bill would remove limitations on inmate eligibility for Medicare, the Children's Health Insurance Program (CHIP) and veteran's health benefits.

In the House, Representative Alcee Hastings (D-FL) introduced H.R. 1345, the Restoring the Partnership for County Health Care Costs Act. While the bill had 28 cosponsors, unfortunately all were Democrats and the bill also lacked key support from advocacy constituencies. Due to extensive conversations with his office about the legislation, we know he intends to resubmit a new version in the 117<sup>th</sup> Congress, one that hopefully may attract broader support.

POSITION: *Support* legislation that would restore pretrial detainee access to federal benefits.



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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.

67,367 drug overdose deaths occurred in the United States in 2018. The age-adjusted rate of overdose deaths decreased by 4.6 percent from 2017 (21.7 per 100,000) to 2018 (20.7 per 100,000). Opioids—mainly synthetic opioids (other than methadone) – are currently the main driver of drug overdose deaths. Opioids were involved in 46,802 overdose deaths in 2018 (69.5 percent of all drug overdose deaths). The rate of deaths in Florida due to drugs actually declined by nearly 10 percent between 2017 and 2018.

The state of Florida has received \$126 million over two fiscal years (FY 2019 and 2020) through the State Opioid Response (SOR) grant program from the Department of Health and Human Services. While the program technically expired at the end of Fiscal Year 2020, Congress continues to fund it, as evidenced by the \$1.5 billion allocation in the appropriations bills that were signed into law in late 2020. SOR is a popular program because now it can be used for the full continuum of services for substance use disorders.

In the future, opioid lawsuits could add another factor to Congress' calculation of how much SOR money states need going forward. Many states are likely to try to make the case that they should receive a significant amount of settlement or lawsuit money in the future.

POSITION: **Support** federal funding to address local opioid addiction and treatment issues. **Support** attempts by entities within Charlotte County to secure funding to fight opioid addiction.



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FEDERAL ISSUE: Affordable Housing

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The Low-Income Housing Tax Credit (LIHTC) program is considered to be the most important resource for creating affordable housing in the United States today. Created by the Tax Reform Act of 1986, the LIHTC program gives State and local LIHTC-allocating agencies the equivalent of approximately \$8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. An average of almost 1,400 projects and 106,400 units were placed in service annually between 1995 to 2018. In Florida, the LIHTC-administering agency is the Florida Housing Finance Corporation.

Virtually no affordable housing is produced without using the LIHTC. Affordable housing developers rely on the credit for a variety of projects, including the production of new units and the preservation of public housing units. However, the limited availability and the popularity of the housing tax credit have made it very competitive in many states.

During the 116<sup>th</sup> Congress, the Affordable Housing Credit Improvement Act of 2019 (S. 1703/H.R. 3077) was bipartisan legislation to expand and strengthen the Low-Income Housing Tax Credit. Specifically, the bill would increase the availability of the housing credit by 50 percent over five years, permanently authorize the 4 percent housing credit, and make other changes that would help make it a more effective tool.

POSITION: *Support* legislation to improve the Low-Income Housing Tax Credit.



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FEDERAL ISSUE: Assessment of Fair Housing Rule

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2015, the Obama Administration published a final rule entitled Affirmatively Furthering Fair Housing (AFFH), which aimed to provide HUD program participants with new guidance to help them meet the requirements of the Fair Housing Act. This rule, however, was seen as overly prescriptive and burdensome by some stakeholders and did not do anything to assist with the overall inadequate supply of affordable housing, instead of diverting significant time and effort to data collection and compliance. Additionally, there were concerns that the rule could make local governments and housing authorities more vulnerable to third-party lawsuits. The rule required stakeholders to use an Assessment Tool, created by HUD, to conduct and submit an Assessment of Fair Housing to HUD, but these tools proved difficult to develop.

During the development of the first round of Assessments of Fair Housing, HUD found the tool to be labor-intensive for both HUD and local governments and to produce incomplete or inaccurate reports. The overall rule was to be implemented in two phases, with the first phase impacting communities that receive at least \$500,000 in CDBG funding and the second phase, following five years later, for those communities receiving less than \$500,000 in CDBG funds a year.

The Trump Administration cancelled the Obama-era rule. However, the Biden Administration has since cancelled the Trump proposed rule and reinstated the Obama-era rule. It is unclear what changes may be made to it in order to address the concerns initially raised by both communities and HUD.

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



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FEDERAL ISSUE: Federal Funding for Mitigation and Resilience

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Apart from funding for public assistance generally provided by Congress through the Federal Emergency Management Agency (FEMA) directly after storms, Congress has developed two other common funding streams to help address long-term mitigation and resilience projects. They are FEMA's recently developed Building Resilient Infrastructure and Communities (BRIC) and the Department of Housing and Urban Development's (HUD) Community Development Block Grant Mitigation program (CDBG-MIT).

*Building Resilient Infrastructure and Communities*

The Disaster Recovery Reform Act (DRRA) from 2018 included reforms to federal disaster programs and amended many sections of the Robert T. Stafford Disaster Relief and Emergency Act including Section 203, Pre-Disaster Mitigation. Among others, Congress created BRIC which will be funded through the Disaster Relief Fund as a six percent set aside from estimated disaster grant expenditures.

BRIC expands the concepts of pre-disaster mitigation by prioritizing the building of resilient infrastructure to make communities better prepared to withstand the next disaster. It will provide incentives for states to work with local communities to identify their most pressing hazards and encourage innovative solutions for building a culture of preparedness. BRIC is expected to favor risk-based approaches and will emphasize projects that build a community's capability and capacity to manage emergencies and buy down the impacts and risk from future disasters. BRIC is likely to favor projects that have whole community partnerships and look at the bigger picture.

FEMA estimates that the program will be funded at \$300 million to \$500 million per year, with significantly greater amounts of money in years that have a high number of catastrophic disaster obligations. The federal/nonfederal match is 75/25, with exceptions for smaller, low-income communities.

The first round of the BRIC program was open for applications in 2020, but projects have yet to be awarded.

*Community Development Block Grant Mitigation program*

Congress created the CDBG-MIT program after disasters of 2016 and 2017, leaving much of the implementation up to HUD and individual states to ultimately disburse. In August 2020, HUD notified Florida that it would receive \$633 million in CDBG-MIT money for "strategic, high-impact projects to mitigate disaster risks and better protect against future losses."

*Update to FEMA Disaster Declaration Thresholds*

FEMA in mid-December published a proposed rule titled "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program." As you know, FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance program. In the Disaster Recovery Reform Act of 2018, Congress directed FEMA to review those factors, specifically the estimated cost of the assistance factor, and to update them through rulemaking, as appropriate.

Specifically, FEMA proposes to raise the per capita indicator and the minimum threshold. Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at \$1 in 1986) as an indicator that a disaster may warrant Federal assistance. The per capita indicator remained at \$1 until 1999, when the Agency began adjusting the indicator for inflation in 1999 and annually thereafter (it was \$1.50 in FY 2019, but would have been \$2.32 had FEMA



accounted for inflation between 1986 and 1999). Also in 1999, FEMA established a \$1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least \$1 million in damages resulting from the disaster and within the proposed area for Public Assistance. At the time, FEMA believed \$1 million was a level of damage from which even the least populous States could recover with their own resources. FEMA has never increased the \$1 million threshold.

1. FEMA proposes to increase the per capita indicator to account for increases in inflation from 1986 to 1999, and to adjust the individual States' indicators by their total taxable resources (TTR).
  - a. Individual States' per capita indicators are proposed to range from \$1.51 to \$3.15.
    - i. Florida's is proposed to be \$1.98 per capita.
    - ii. Using the new formula, Florida would have to have storm damages exceeding \$42,172,664 in order to be eligible for a federal disaster declaration. This is an increase of 49.5% from the state's current baseline.
2. FEMA also proposes to increase the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter.
  - a. The proposed rule would increase the current minimum threshold from \$1 million to \$1.535 million for FY 2019.

FEMA believes these changes would provide a better distribution of responsibilities between the States and the federal government, and will incentivize States to invest more in response, recovery, and mitigation capabilities. While these proposed changes might be reasonable, it should be clearly understood that this proposed rule will ensure that either fewer disasters are federally declared and therefore benefit from FEMA funding or that it simply takes longer for federal assistance to be authorized, given that more time will need to be spent writing Preliminary Damage Assessments in order to meet the new threshold.

**POSITION:** *Monitor* the Federal Emergency Management Agency's Building Resilient Infrastructure and Communities program and the Housing and Urban Development's Community Development Block Grant Mitigation program. *Support* Charlotte County's efforts to secure funding from each program. *Monitor* the Federal Emergency Management Agency's proposed rule "Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program."