LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

Friday, September 16, 2022
10:00 a.m. – 2:00 p.m. EDT

Cypress 3,4,5
Embassy Suites Lake Buena Vista South
4955 Kyngs Heath Road
Kissimmee, FL 34746

FLC Staff Contact: David Cruz

FLC
FLORIDA LEAGUE OF CITIES

Agenda

Land Use & Economic Development Legislative Policy Committee
Friday, September 16, 2022 ~ 10:00 a.m.—2:00 p.m.
Embassy Suites Lake Buena Vista South
4955 Kyngs Heath Rd, Kissimmee, FL 34746

AGENDA

I. Introduction & Opening Remarks ..... **Chair Linda Hudson**
Mayor, City of Fort Pierce

II. FLC Policy Committee Process for 2022-2023 ..... **David Cruz, FLC Staff**

III. Policy Presentations

A. Sovereign Immunity ..... **Mark Delegal**
Partner, Delegal | Aubuchon Consulting

B. Annexation ..... **Jeremy Allen**
Village Manager, Village of Tequesta

C. Mobility Plans ..... **John D'Agostino**
Town Manager, Town of Lake Park
Chelsea Reed
Mayor, City of Palm Beach Gardens

D. Impact Fees ..... **David Cruz, FLC Staff**

E. Residential Infill Zoning ..... **David Cruz, FLC Staff**

IV. Committee Discussion ..... **Chair Linda Hudson**
Mayor, City of Fort Pierce

V. Additional Information ..... **David Cruz, FLC Staff**

A. Key Legislative Dates

B. Home Rule Hero Criteria

C. Key Contacts – Click HERE to sign-up

VI. Closing Remarks ..... **Chair Linda Hudson**
Mayor, City of Fort Pierce

VII. Adjournment

Breakfast and Lunch provided by the Florida League of Cities

WiFi Available
Network: FLC
Password: Policy2022

Committee Roster

FLORIDA LEAGUE OF CITIES

2022-2023 Legislative Policy Committee

Land Use & Economic Development

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Policy Development Process

2022-2023 FLC Legislative Policy Process

The Florida League of Cities' (FLC) Charter and Bylaws specify that the League shall engage only on legislation that pertains directly to "municipal affairs." "Municipal affairs" means issues that directly pertain to the governmental, corporate and proprietary powers to conduct municipal government, perform municipal functions, render municipal services, and raise and expend revenues. Protecting Florida's cities from egregious far-reaching attacks on Home Rule powers will always be the top priority.

Each year, municipal officials from across the state volunteer to serve on the League's legislative policy committees. Appointments are a one-year commitment and involve developing the League's Legislative Action Agenda. The Action Agenda addresses priority issues of statewide interest that are most likely to affect daily municipal governance and local decision-making during the upcoming legislative session.

Policy committee members also help League staff understand the real-world implications of proposed legislation, and they are asked to serve as advocates throughout the year. To get a broad spectrum of ideas and better understand the impact of League policy proposals on rural, suburban and urban cities of all sizes, it is ideal that each of Florida's cities be represented on one or more of the legislative policy committees.

The Florida Legislature convenes the 2023 Legislative Session on March 7. The League's legislative policy committee meetings commence in September 2022 and meet three times.

There are currently five standing *legislative policy committees*:

Finance, Taxation and Personnel Committee: This committee addresses municipal roles in general finance and tax issues, Home Rule revenues, infrastructure funding, insurance, local option revenues, pension issues, personnel and collective bargaining issues, revenue sharing, tax and budget reform, telecommunications and workers' compensation.

Land Use and Economic Development Committee: This committee addresses policies specific to municipal concerns with community redevelopment, economic development, growth management and land use planning issues, annexation, eminent domain, tort liability, property rights and ethics.

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LOCAL VOICES MAKING LOCAL CHOICES

Municipal Administration Committee: This committee addresses municipal concerns with code enforcement, elections, emergency management, gaming, homeland security, public meetings, public property management, public records, public safety and procurement, as well as charter counties and special districts.

Transportation and Intergovernmental Relations Committee: This committee addresses municipal concerns relating to transportation and highway safety, as well as aviation, affordable housing (and homelessness), billboards, building codes, charter schools, rights-of-way and veterans affairs.

Utilities, Natural Resources and Public Works Committee: This committee addresses policies specific to municipal concerns with coastal management, energy, environmental and wetlands permitting, hazardous and toxic wastes, recycling, solid waste collection and disposal, stormwater, wastewater treatment and reuse, water management and water quality and quantity.

At the last meeting, each of the five policy committees adopts ONE legislative priority that will be submitted to the Legislative Committee. The Legislative Committee is composed of:

- Each legislative policy committee chair and the chairs of the other standing committees
- The President of each local and regional league
- The Presidents of several other municipal associations
- Chairs of the municipal trust boards
- Several at-large members appointed by the FLC President.

The policy priorities, as adopted by the Legislative Committee, are then recommended to the general membership for approval as the League's Legislative Action Agenda.

In addition, a legislative policy committee may, but is not required to, recommend ONE policy position related to other relevant legislative issues. The policy position must satisfy the same criteria above for legislative priorities. The recommended policy position will be considered by the Legislative Committee. If favorably considered by that committee, it will be considered by the general membership. If adopted by the general membership, the policy position may be published and communicated to legislators and others, as appropriate.

Due to Sunshine Law issues, only one elected official per city can be represented on a committee, but a city could have an elected and a non-elected city official on each of the five policy committees. Appointments are made by the League president based upon a city official's support and advocacy of the Legislative Action Agenda and participation at meetings, Legislative Action Days and other legislative-related activities.

2022 Legislative Policy Committee Meeting Dates

- September 16, 2022, 10:00 a.m. to 2:00 p.m. at the Embassy Suites Lake Buena Vista South, 4955 Kyngs Heath Road, Kissimmee, FL.
- October 7, 2022, 10:00 a.m. to 2:00 p.m. at the Embassy Suites Lake Buena Vista South, 4955 Kyngs Heath Road, Kissimmee, FL.
- December 1, 2022, during the FLC Legislative Conference at the Embassy Suites Lake Buena Vista South, 4955 Kyngs Heath Road, Kissimmee, FL.

If you are interested in serving or learning more, please contact Mary Edenfield at 850.701.3624 or *medenfield@flcities.com*.

Sovereign Immunity

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 974
INTRODUCER:	Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Gruters
SUBJECT:	Sovereign Immunity
DATE:	February 24, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Bond	Phelps	RC	**Fav/CS**
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 974 increases the limits of the state's waiver of sovereign immunity for some public entities. The limits are increased from $200,000 per injured person and $300,000 per incident to $400,000 per person and $600,000 per incident for the state, state agencies, and a county or municipality with a population in excess of 250,000, and are increased to $300,000 per person and $400,000 per incident for a county or municipality with a population between 50,000 and 250,000. The bill allows sovereign entities other than the state or a state agency to voluntarily pay a claim in excess of the limits without the need for a claim bill.

The bill also provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute.

The bill appears to have a significant indeterminate negative fiscal impact on state and local governments.

The bill is effective October 1, 2022, and applies to any claim accruing on or after that date.

II. Present Situation:

Sovereign immunity is defined as: "A government's immunity from being sued in its own courts without its consent."[1] The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

> A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.[2]

The State Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions. Currently, tort suits against the state and its subdivisions are allowed, but collectability of judgments is limited to $200,000 per person and $300,000 per incident. Damaged persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.[3] This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.[4]

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV, State Const. (1868).[5] The Legislature again was expressly authorized to waive the state's sovereign immunity under s. 13, Art. X, State Const. (1968). Section 13, Art. X, State Const. (1968) states:

> Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."[6] The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.[7] The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.[8]

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[1] BLACK'S LAW DICTIONARY (8th ed. 2004).
[2] *Cauley v. City of Jacksonville,* 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).
[3] Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.
[4] *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).
[5] Section 19, Art. VI, State Const. (1868), states: "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."
[6] *Cauley*, 403 So. 2d at note 5.
[7] D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).
[8] *Id.*

Statutory Waivers of Sovereign Immunity

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity.[9] The 1969 Legislature also adopted another law that provided for the repeal of s. 768.15, F.S., after a year in effect.[10]

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.[11] The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today. Section 768.28(1), F.S. (1973), states:

> In accordance with s. 13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(5), F.S. (1973), the collectability of tort judgments against the state was limited to $50,000 per person and $100,000 per incident. Attorney fees were also limited to 25 percent of the proceeds of judgments or settlements.[12] In 1981, the Legislature increased the amount of damages that could be collected to $100,000 per person and $200,000 per incident.[13] In 2010, the Legislature increased the limits to $200,000 per person and $300,000 per incident.[14]

Cost of Florida's Waiver of Sovereign Immunity

The exact cost of the state's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.[15] The Division also settles and defends tort suits filed against the agencies.

[9] Chapter 69-116, Laws of Fla.
[10] Chapter 69-357, Laws of Fla.
[11] Chapter 73-313, Laws of Fla.
[12] Section 768.28(8), F.S. (1973).
[13] Chapter 81-317, Laws of Fla.
[14] Chapter 2010-26, Laws of Fla.
[15] Section 284.30, F.S.

In Fiscal Year 2020-21, the Division paid $4,189,287 for the resolution of 2,588 general liability claims.[16] Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2020-21, the Division paid $5,884,341 for the resolution of 478 automobile liability claims.[17]

Claim Bill Process

Persons who wish to seek the payment of claims in excess of the statutory limits must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review. Senate and House Special Masters typically hold a joint hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.

III. Effect of Proposed Changes:

The bill changes the limits of the waiver of sovereign immunity for a claim accruing on or after October 1, 2022, as follows:

- For the state, a state agency, a county or municipality with a population in excess of 250,000 persons, including the constitutional officers of such county, the limits are increased to $400,000 per person injured and $600,000 per incident.
- For a county or municipality with a population between 50,000 and 250,000 persons, including the constitutional officers of such county, the limits are increased to $300,000 per person injured and $400,000 per incident.
- For a county or municipality of less than 50,000 persons, or for a state university, public college, subdivision of the state, or any other entity covered by sovereign immunity not within the two categories above, the current limits of $200,000 per person injured and $300,000 per incident apply.

If multiple sovereign entities are liable, the total liability for all of the entities may not exceed the amount for the entity with the highest liability limit.

The bill provides that a claim, other than one against the state or a state agency, may be voluntarily paid by an entity in excess of the limits without the need for a claim bill. The bill repeals the current law requirement that payment above the caps may only be made without a claim bill if paid within policy limits.

The bill provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute.

The bill is effective October 1, 2022. The bill applies to claims accruing on or after October 1, 2022.

[16] Department of Financial Services, Division of Risk Management, *Fiscal Year 2021 Annual Report*, at 24 (2021).
[17] *Id.* at 22.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those individuals obtaining judgments from or settlements with the state and its agents and subdivisions may receive additional compensation because of the increase in the liability limits for claims arising on or after October 1, 2022. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

C. Government Sector Impact:

The potential fiscal impact of increasing the liability limits of state and local governments will be contingent upon the number of claims filed and the value of those claims. The state and its subdivisions may experience an increase in insurance premiums for liability coverage, or may see an increase in self-insurance costs, in response to the increase in liability limits. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 23, 2022:
The CS changes the limits of the waiver of sovereign immunity from a fixed amount applicable to all sovereign entities to a scaled level based on the type of entity; removes from the bill a restriction on claim bill requirements in insurance policies: removes future CPI increases; and adds that the bill only applies to claims accruing on or after October 1, 2022.

CS/CS by Community Affairs on February 8, 2022:
The CS changes the limits of the waiver of sovereign immunity to $1 million per injured person with a $3 million limit per incident. A claim may be voluntarily paid in excess of the limits without the need for a claim bill. An insurance policy may not condition the payment of benefits on the enactment of a claim bill.

The CS provides that the annual adjustment of the waiver amount will start July 1, 2023, rather than July 1, 2032.

The CS further provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute. This section applies to those claims that would not have been time barred on or before July 1, 2010.

CS by Judiciary on January 31, 2022:
The CS changes the liability limits, changes the inflation adjustment period, and provides that inflationary adjustments are rounded to the nearest $10,000. The CS also removes provisions for retroactivity, the ability of an entity to voluntarily pay a claim above the limits without a claim bill, the prohibition on claim bill clauses in insurance contracts, and the extension of a statute of limitations.

B. Amendments:

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 985 Sovereign Immunity
SPONSOR(S): Judiciary Committee, Civil Justice & Property Rights Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:** HB 799

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 1 N, As CS	Mathews	Jones
2) Appropriations Committee	23 Y, 1 N	Harrington	Pridgeon
3) Judiciary Committee	19 Y, 0 N, As CS	Mathews	Kramer

SUMMARY ANALYSIS

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In turn, s. 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct.

Section 768.28(5), F.S., caps tort recovery from a governmental entity at $200,000 per person and $300,000 per incident. Although a court may enter a judgment in excess of these caps, it is impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps provide. Further, section 768.28(6), F.S., imposes pre-suit requirements upon a claimant seeking to recover against a state or local government entity, allowing a general six-month period for the government entity to review and dispose of a claim before the claimant may file a lawsuit.

A state or local government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of its insurance coverage.

CS/CS/HB 985:

- Increases the sovereign immunity caps for damages against state and local government entities to $400,000 per person and $600,000 per incident.
- Allows a subdivision of the state to settle a claim and pay the settled amount without the need for a claim bill, but does not provide for a state government entity to pay a claim above the statutory cap amount without a claim bill.
- Eliminates any statute of limitations for filing a claim against the state or a local government entity for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. However, the bill does not resuscitate any such claim which would have been time-barred as of July 1, 2010.
- Reduces from six months to three months the general pre-suit statutory time period for a government entity to review and dispose of a claim.
- Reenacts several statutory sections for the purpose of incorporating the changes made by the bill.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. The increased costs will affect the State Risk Management Trust Fund.

The bill provides an effective date of October 1, 2023. The bill applies to all claims accruing on or after that date, except as otherwise provided within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[1] Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, s. 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to "'injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment ....'"[2]

Section 768.28(5), F.S., caps tort recovery from a governmental entity at $200,000 per person and $300,000 per incident.[3] Although a court may enter an excess judgment, the statutory caps make it impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps provide.[4]

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[5] A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[6]

A law enforcement agency may be liable for injury, death, or property damage by a person fleeing one of its law enforcement officers if the pursuit involves conduct by the officer so reckless as to constitute disregard for human rights, the officer did not initiate pursuit under the reasonable belief that the fleeing person had committed a forcible felony, and the pursuit was not conducted pursuant to a written policy.[7] While s. 768.28(9)(a), F.S., grants individual state officers immunity from judgment *and* suit in certain cases, s. 768.28(9)(d), F.S., only grants employing agencies immunity from judgment.[8]

Presuit Procedures for a Claim Against the Government

Before a claimant files a lawsuit against a government entity, the claimant generally must present its claim in writing to the government entity within the statute of limitations prescribed by law.[9] If the claim is brought against the state, the claimant must also present its claim to the Department of Financial Services (DFS). The government entity generally then has six months to review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.[10]

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[1] *Sovereign immunity*, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited Feb. 17, 2022).
[2] *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).
[3] S. 768.28(5), F.S.
[4] *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[5] S. 768.28(9)(a), F.S.
[6] *Id*.
[7] S. 768.28(9)(d), F.S.
[8] *Ross v. City of Jacksonville*, 274 So. 3d 1180, 1186 (Fla. 1st DCA 2019).
[9] *See* s. 768.28(6)(a), F.S.
[10] *See* s. 768.28(6)(d), F.S.

Damages

The liability caps in s. 768.28(5), F.S., apply to "all of the elements of the monetary award to a plaintiff against a sovereignly immune entity."[11] In other words, a plaintiff's entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

Generally, damages are of two kinds: compensatory and punitive.[12] Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible.[13] They arise from actual and indirect pecuniary loss.[14] Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.[15] Such obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.[16] Legislative claim bills are typically used after procurement of a judgment or settlement in an action at law.[17] The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.[18] Unlike civil judgments, claim bills are not obtainable by right upon the claimant's proof of his entitlement; rather, they are granted as a matter of legislative grace.[19]

Once a legislative claim bill is formally introduced, a special master usually conducts a quasi-judicial hearing.[20] This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Witnesses who testify are sworn and subject to cross-examination.[21] A responding agency may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.[22]

A government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.[23]

Statute of Limitations for Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitations for various types of civil actions. In 2010, the Legislature amended s. 95.11 to remove any statute of limitations applying to a civil action for sexual battery if the victim was under 16 at the time of the crime.[24] The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.[25]

[11] *Gallagher v. Manatee Cty*., 927 So. 2d 914, 918 (Fla. 2d DCA 2006).
[12] 22 Am. Jur. 2d s. 1 at 13 (1965).
[13] *Fisher v. City of Miami,* 172 So. 2d 455 (Fla. 1965).
[14] *Margaret Ann Supermarkets, Inc. v. Dent,* 64 So. 2d 291 (Fla. 1953).
[15] *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)
[16] *Id.*
[17] *City of Miami v. Valdez,* 847 So. 2d 1005 (Fla. 3d DCA 2003).
[18] *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).
[19] *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).
[20] *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).
[21] *Id.*
[22] *Id.*
[23] S. 768.28(5), F.S.
[24] Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.
[25] *Id.* ("This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010").

Effect of Proposed Changes

The bill amends s. 768.28, F.S., to increase the caps for tort damages against the state, its agencies, and its subdivisions from $200,000 to $400,000 per person, and from $300,000 to $600,000 per incident.

The bill also amends s. 768.28(6) and (14), F.S., to eliminate any statute of limitations for a civil claim against the state or one of its subdivisions for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. As such, a claimant in such situation may present his or her claim in writing at any time, and he or she may commence the civil action at any time. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010. In making these changes, the bill aligns the provisions of s. 768.28, F.S., with the 2010 amendments to s. 95.11, F.S., involving a civil action where a plaintiff under 16 is the victim of sexual battery. Under the bill, such victim of sexual battery will be able to bring his or her claim at any time, regardless of whether the civil defendant is a private party or a government entity.

The bill changes language within s. 768.28, F.S., to allow a subdivision of the state to settle a claim in any amount and then pay that amount without the need for a legislative claim bill. However, the bill does not allow a state government entity to settle a claim in excess of the statutory cap amount.

The bill also decreases from six months to three months the amount of time a government entity has to make a final disposition of a claim during the pre-suit process within s. 768.28(6), F.S., after which time the plaintiff may bring a lawsuit.

The bill reenacts a number of statutory sections for the purpose of incorporating the changes made by the language of the bill.

The bill provides an effective date of October 1, 2023. The provisions of the bill apply to all claims accruing on or after that date, except that the bill applies to claims relating to sexual battery on a person under 16 that may have accrued at any time. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions.
Section 2: Reenacts provisions within the Florida Statutes for the purpose of incorporating the amendments made by the act.
Section 3: Provides that the act applies to claims accruing on or after the effective date, except as otherwise provided.
Section 4: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

The bill has a negative fiscal impact on local governments. The amount of the cost resulting from the change to the state's waiver of sovereign immunity limits and ability to settle claims in excess of those limits under s. 768.28, F.S., is indeterminate. However, local government expenditures would likely increase for settlements, awards, and other legal costs.[26]

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts paid to satisfy tort claims.

D. FISCAL COMMENTS:

By increasing the sovereign immunity cap, the bill increases the possibility that the state and its agencies and subdivisions will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary for claimants.

By reducing the pre-suit time period for a government entity or DFS to review and dispose of a claim against the state, the bill may have an impact on the pre-suit settlement process.

Finally, the bill may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against government entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment decreased from six months to three months the amount of time a state or local government entity has to make a final disposition of a claim during the pre-suit process set out in s. 768.28(6), F.S.

On February 28, 2022, the Judiciary Committee adopted a proposed committee substitute and passed the bill favorably as a committee substitute. The committee substitute differed from the underlying bill in that it:

[26] DFS, *supra* note 24.

- Changed the sovereign immunity cap, for the state and subdivisions of the state, from:
    - $1,000,000 per person to $400,000 per person.
    - An unlimited amount per incident to $600,000 per incident.
- Permitted a subdivision of the state to settle and pay a claim in any amount without the need for a claim bill, but did not provide for a state government entity to do so.
- Removed language prohibiting an insurance agreement from conditioning payment on the passage of a claim bill.
- Removed an automatic annual adjustment to the sovereign immunity cap based on the Consumer Price Index (CPI).
- Changed the bill's effective date from July 1, 2022, to October 1, 2023, to accommodate the fiscal cycle of subdivisions of the state.
- Provided that the bill generally applies to a cause of action accruing on or after the bill's effective date.
- Made other technical and clarifying changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

Annexation

Annexation

Priority Statement:
The Florida League of Cities SUPPORTS legislation that facilitates the municipal annexation of unincorporated areas while protecting private property rights and respecting municipal boundaries.

Background:
In Florida, there are four ways in which an annexation may take place: by special act of the Legislature, a voluntary annexation, an involuntary annexation or an interlocal agreement with the county.

Under the Florida Constitution, the Legislature has the authority to develop procedures for the municipal annexation of unincorporated territory by general or special law. In 1974, the Municipal Annexation or Contraction Act was passed, providing a mechanism for municipalities to annex territory and recede from territory by contraction. This act allowed municipalities to annex territories that is “contiguous, compact, unincorporated and developed for urban purposes."

The current annexation process makes it difficult for cities to annex certain unincorporated enclaves and unincorporated areas where city services are already being provided. Current law requires that if more than 70% of the land in the area proposed to be annexed is owned by individuals, corporations or legal entities that are not registered electors of the area, the area cannot be annexed without the approval of at least 50% of the owners. Additionally, a vote of electors of the area proposed to be annexed is not required if the area does not have any registered voters.

In some cases, the process of taking a vote of the electors of the area proposed to be annexed prior to annexation has frustrated annexation efforts to the detriment of property owners desiring to be annexed.

During the 2017 Legislative Session, a bill was proposed that would have removed the limitation on requiring the city to get permission “from at least 50 percent of owners in an area proposed to be annexed, when more than 70 percent of the land is owned by individuals, corporations, or legal entities." Additionally, the legislation would have allowed for an area to be annexed without a vote of the electors if there are no registered electors that own property in the area proposed to be annexed on the date the ordinance is adopted. Ultimately, the 2017 legislation

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failed to pass the Legislature.

The League will support legislation that facilitates the annexation of enclaves, gives property owners an adequate voice in the annexation of their properties and requires that any contraction or de-annexation initiated by special act must be agreed to by each of the municipalities involved.

Annexation

Priority Statement:

The Florida League of Cities SUPPORTS legislation that facilitates the municipal annexation of unincorporated areas while protecting private property rights and respecting municipal boundaries.

Background:

- The Florida Constitution authorizes the Legislature to develop procedures for the municipal annexation of unincorporated territory by general or special law.

- The Legislature passed the "Municipal Annexation or Contraction Act," in 1974, which provides a mechanism for municipalities to annex territory and to recede from territory by contraction.

- Currently, the annexation process makes it difficult for cities to annex certain unincorporated enclaves and unincorporated areas where city services are already being provided.

- Additionally, the processes of taking a vote of the electors of the area proposed to be annexed prior to annexation has frustrated annexation efforts to the detriment of property owners desiring to be annexed.

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2020 ANNEXATION PRESENTATION to the FLC LAND USE & GROWTH MANAGEMENT POLICY COMMITTEE MEETING, SEPTEMBER 18, 2020

I. Issues Discussed Below
   a. Enclaves
   b. Non-property Owner Voters in a Voluntary Annexation
   c. Annexation/De-Annexation

II. Attachments:
   a. Proposed Annexation Bill Draft

2019 ANNEXATION PROPOSAL – The issues discussed below were matters discussed by the Ad Hoc Committee on Annexation - Brief Explanation: the three issues listed above are addressed in the attached legislative bill draft (this draft is essentially the same as the bill draft that Rep. Silvers received from House Bill Drafting just before the start of the 2019 Legislative Session for filing. Although, Rep. Silvers ultimately decided not to file the bill this last Session, he indicated a willingness to file it in 2020).

The proposed bill would amend chapter 171 – the annexation law:

a. Enclaves: It expands the definition of enclave to include situations where two or more cities surround an unincorporated area or a situation where an unincorporated area is surrounded by two or more cities and a natural or man-made barrier. Typically cities in this situation will be the regular provider of first responder services. This change would facilitate a city or cities in these kinds of situations in initiating the annexation process already provided for in law for unincorporated areas of 110 acres or less (the size of an enclave is limited by definition within the statute) .
b. Non-property Owner Voters in a Voluntary Annexation: The bill would facilitate annexation where a majority of individual property owners in a given area seek annexation and where there are no registered voters living in the area to be annexed that are property owners. Currently property owners seeking to be annexed under the statute can be prevented from doing so by tenants or other registered voters who use the address of a post office, library or storage facility to register to vote (the so-called “homeless voters”). This bill would allow the ultimate decision on whether to be annexed up to the property owners.
c. Annexation/De-Annexation: And finally, the bill would clarify that only a municipality or its residents may initiate a contraction or de-annexation of an area that lies within its boundaries under the statute (s.171.051, F.S.). Furthermore, this section is amended to require that any contraction or de-annexation initiated by special act must be agreed to by each of the municipalities involved.

A bill to be entitled

An Act relating to annexation procedures for municipalities; amending s. 171.031, F.S., revising definitions; amending s. 171.0413, F.S., revising circumstances under which a municipality is prohibited from annexing certain lands in contiguous, compact, or unincorporated areas without getting consent from a specified percent of landowners in the area; specifying circumstances under which a vote of the electors in the area to be annexed is not required; amending s.171.051, F.S., clarifying language in the section, providing certain procedures for a contraction proposed by special act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (13) of section 171.031, Florida Statutes is amended to read:

171.031 Definitions.— As used in this chapter, the following words and terms have the following meanings unless some other meaning is plainly indicated:

(13) "Enclave" means:

(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality or by two or more municipalities; or

(b) Any unincorporated improved or developed area that is enclosed within and bounded by one or more municipalities ~~a single municipality~~ and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through one or another of those municipalities ~~the municipality~~.

Section 2. Subsections (5) and (6) of section 171.0413, Florida Statutes, are amended to read:

171.0413 Annexation procedures.— Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(5) If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations, or legal entities ~~which are not registered electors of such area~~, such area shall not be annexed unless the owners of more than 50 percent of the land in such area consent to such annexation. Such consent shall be obtained by the parties proposing the annexation prior to the referendum to be held on the annexation.

(6) Notwithstanding subsections (1) and (2), if the area proposed to be annexed does not have any registered electors that own property in the area to be annexed on the date the ordinance is ~~finally~~ adopted, a vote of the electors of the area proposed to be annexed is not required. In addition to the requirements of subsection (5), the area may not be annexed unless the owners of more than 50

percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body of the annexing municipality does not ~~choose to~~ hold a referendum ~~of the annexing municipality~~ pursuant to subsection (2), then the consent of the property owners ~~property owners consents~~ required pursuant to subsection (5) shall be obtained by the parties proposing the annexation prior to the final adoption of the ordinance, and the annexation ordinance shall be effective upon becoming a law or as otherwise provided in the ordinance.

Section 3. Subsections (1) and (2) of section 171.051, Florida Statutes, are amended and a new subsection (11) is added to that section, to read:

171.051 Contraction procedures.— Any municipality may initiate the contraction of its municipal boundaries in the following manner:

(1) The governing body shall by ordinance propose the contraction of its municipal boundaries, as described in the ordinance, and provide an effective date for the contraction.

(2) A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance, which must specifically state the facts upon which the contraction petition is based. The municipality to which such petition is directed to immediately undertake a study of the feasibility of such proposal and shall, within 6 months, either initiate proceedings under subsection (1) or reject the petition, specifically stating the facts upon which the rejection is based.

(11) Special acts of the legislature providing for contraction of one municipality's boundaries and annexation of the contracted area into another municipality must first be proposed in a resolution adopted by the governing body of each municipality involved.

Section 4. This act shall take effect July 1, 2019.

Mobility Plans

By Senator Brodeur

9-01555B-22 20221824__

A bill to be entitled

An act relating to mobility funding systems; amending s. 163.3164, F.S.; defining the terms "mobility fee" and "mobility plan"; amending s. 163.3180, F.S.; revising requirements and best practices for local governments applying concurrency to transportation facilities; requiring a local government electing to repeal transportation concurrency to adopt a specified alternative mobility funding system; creating s. 163.31803, F.S.; specifying prohibited uses of, and requirements and best practices for, mobility plans by local governments; providing requirements for a local government electing to adopt a mobility plan and mobility fee; providing that mobility fee-based funding systems must comply with specified requirements governing impact fees; specifying authorized and prohibited provisions in mobility plans; prohibiting the imposition of transportation impact fees in certain areas; specifying requirements for, and restrictions on, mobility fees, fee updates, and fee increases; specifying requirements for the calculation of mobility fees and person travel demand; requiring that collected mobility fees be expended or committed within a specified timeframe or be returned to the applicant paying the fee; specifying requirements for, and restrictions on, transportation impact mitigation by multiple local governments; providing best practices for certain coordination by local governments; providing a burden of proof;

prohibiting a court from using a certain standard for the benefit of a local government; providing construction; amending s. 212.055, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (32) through (52) of section 163.3164, Florida Statutes, are redesignated as subsections (34) through (54), respectively, and new subsections (32) and (33) are added to that section, to read:

163.3164 Community Planning Act; definitions.—As used in this act:

(32) "Mobility fee" means a local governmental fee schedule established by ordinance and based on the projects included in the adopted mobility plan.

(33) "Mobility plan" means an integrated land use and alternative mobility transportation plan adopted into a local government's comprehensive plan which promotes compact, mixed-use, and interconnected development served by a multimodal transportation system.

Section 2. Paragraphs (b), (c), (f), and (i) of subsection (5) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(5)

(b) A local government shall apply the principles, guidelines, standards, and strategies provided in its comprehensive plan ~~governments shall use professionally accepted studies~~ to evaluate the appropriate levels of service. A local

government ~~governments~~ should consider the number and type of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.

(c) A local government shall apply the principles, guidelines, standards, and strategies provided in its comprehensive plan ~~governments shall use professionally accepted techniques~~ for measuring levels of service when evaluating potential impacts of a proposed development.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.

2. Adoption of an areawide level of service not dependent on any single road segment or other facility function.

3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.

4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where

existing or planned community design will provide adequate level of mobility.

6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.

(i) ~~If~~ A local government electing ~~elects~~ to repeal transportation concurrency shall~~, it is encouraged to~~ adopt an alternative mobility funding system as provided in s. 163.31803 ~~that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with s. 163.31801 governing impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h)~~.

Section 3. Section 163.31803, Florida Statutes, is created to read:

163.31803 Mobility plans.—

(1) This section establishes the uniform framework for the

adoption and implementation of a mobility plan as an alternative to transportation concurrency, as provided in s. 163.3180.

(a) A mobility plan may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals, provided that the developer agrees to pay for the development's identified transportation impacts via the mobility fees implemented by the local government in the mobility plan.

(b) A mobility plan must comply with the requirements of s. 163.3180(5)(h), and a local government adopting a mobility plan is encouraged to apply the criteria in s. 163.3180(5)(f).

(c) A local government electing to adopt a mobility plan must adopt the mobility plan and mobility fee into its comprehensive plan.

(d) A local government must adopt a mobility plan and mobility fee system by ordinance after conducting at least two public workshops before adoption.

(e) The adoption of the mobility fee ordinance must be approved by a two-thirds vote of the governing body of the local government unless the total amount of the new mobility fee is less than the total of all fees available to be imposed by the local government on a single development to mitigate the transportation impact of the new development or redevelopment.

(2) A mobility fee-based funding system must comply with this section and s. 163.31801, governing impact fees.

(3) A mobility plan may include existing and emerging transportation technologies that reduce dependence on motor vehicle travel capacity. The mobility plan may not be based

solely on the addition of motor vehicle capacity; must reflect modes of travel and emerging transportation technologies reducing reliance on motor vehicle capacity which are established in the local government's comprehensive plan; and must identify multimodal projects consisting of improvements, services, and programs which increase capacity needed to meet future travel demands.

(4) A transportation impact fee may not be imposed within the area designated for the imposition of a mobility fee by a local government mobility plan.

(5) A mobility fee, fee update, or fee increase must be based on the mobility plan, may not rely solely on motor vehicle capacity, and must be used exclusively to implement the mobility plan and for no other purpose.

(6) Notwithstanding s. 163.31801(6), if a local government elects to update an existing mobility fee or adopt a new mobility fee that replaces one or more existing transportation mitigation fees after July 1, 2022, it may not increase the fee by more than a total of 50 percent, which increase must be implemented over 5 years in equal increments.

(7) A mobility fee must be updated at least once within 5 years after the date of the immediately preceding adoption or update. A mobility fee not updated within 5 years as provided in this subsection is expired, void, and of no further force or effect. A local government considering a mobility fee update may not consider annual inflation adjustments or any phased-in fees as the fulfillment of the required update.

(8) A local government adopting a mobility plan and mobility fee system for transportation mitigation shall comply

with all of the following:

(a) Beginning September 1, 2022, a new mobility fee, fee update, or fee increase must be based on a mobility plan.

(b) The calculation of mobility fees must be based on all of the following in addition to the requirements of s. 163.31801:

1. Projected increases in population, employment, and vehicle and person miles of travel.

2. Areawide road levels of service or quality of service standards and multimodal quality of service standards for modes of travel included in the mobility plan.

3. Multimodal projects identified in the mobility plan which are attributable to, and meet the travel demands of, new development and redevelopment and which include person capacities based on service standards and projected costs.

4. An evaluation of current and future travel conditions to ensure that new development and redevelopment are not charged for backlog and associated capacity deficiencies.

5. An evaluation of the projected increases in person miles of travel and person miles of capacity to calculate the fair share of multimodal capacity and the costs of multimodal projects which are assignable and attributable to new development and redevelopment.

6. Person travel demand corresponding to the transportation impact assigned to uses included in the mobility fee schedule, based on trip generation, new trips, person trips, person trip lengths, excluded travel on limited access facilities, and adjustments for origin and destination.

7. The mobility fee may not be based on recurring

transportation costs.

(c) Person travel demand must be localized, reflecting differences in the need for multimodal projects and travel within urban areas based on reduced trip lengths and the availability of existing transportation infrastructure.

(d) A local government may recognize reductions in person travel demand for affordable housing and economic development.

(e) Any calculation of person travel demand must ensure that new development and redevelopment are not assessed twice for the same transportation impact.

(9) A mobility fee collected for an identified transportation mitigation improvement must be expended or committed for an identified project within 6 years after the date of collection or must be returned to the applicant who paid the fee. For purposes of this subsection, an expenditure or improvement is deemed committed if the preliminary design, right-of-way, or detailed design for the project is completed and construction will commence within 2 years.

(10) A local government issuing a building permit for development within its jurisdiction shall develop a mobility fee, based on the adopted mobility plan, to ensure that the transportation impacts of the new development or redevelopment project are fully mitigated. Where multiple local governments are seeking to implement a mobility fee, an impact fee, or another transportation mitigation exaction within the boundaries of a local government, the person travel demand roughly proportional to the transportation impact of new development and redevelopment must initially be based on that assessed by the governmental entity issuing the subject development's building

permit. Another local government may not charge new development or redevelopment for the same travel demand, capacity, and improvements assessed by the governmental entity issuing the development's building permits.

(11) Local governments are encouraged to coordinate the identification of multimodal projects, along with capacity improvements, full costs, and timing of improvements, included in mobility plans with other affected local governments to address intrajurisdictional and extrajurisdictional impacts. The coordination is encouraged to identify measurable factors addressing the share of person travel demand which each local government should assess; the proportion of costs of multimodal projects to be included in the mobility fee calculations; which entity will construct the multimodal projects; and, if necessary, whether the projected future ownership of the multimodal project and underlying facility should be transferred from the affected local government to the local government adopting the mobility fee. Any mobility fee, impact fee, or other transportation mitigation exaction other than the one assessed by the local government issuing the building permits must include the same benefit reductions in person travel demand for affordable housing, economic development, urban areas, and mixed-use development.

(12) A local government adopting a mobility fee, and any other local government assessing a transportation exaction for intrajurisdictional or extrajurisdictional impacts, has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or exaction meets the requirements of this section. A court may not use a deferential

standard for the benefit of the local government.

Section 4. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial

property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(41) ~~s. 163.3164(39)~~, s. 163.3221(13), or s. 189.012(5), and includes facilities that

are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

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.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade;

replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

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.

Section 5. This act shall take effect July 1, 2022.

A bill to be entitled

An act relating to alternative mobility funding systems; amending s. 163.3164, F.S.; providing definitions related to alternative mobility funding systems; amending s. 163.3180, F.S.; requiring a local government to apply certain criteria provided in its comprehensive plan to evaluate the appropriate levels of service; requiring a local government to adopt a mobility plan under certain circumstances; creating s. 163.31803, F.S.; providing legislative intent; requiring a local government adopting a mobility plan to evaluate appropriate levels of service and potential impacts of development by using the elements of its comprehensive plan; requiring a local government that adopts a mobility plan to incorporate the mobility plan and mobility fee schedule into its comprehensive plan; specifying procedures for adopting a mobility plan or a mobility fee schedule; requiring mobility fees to meet certain requirements; specifying criteria that must be met in adopting a mobility plan; prohibiting a transportation impact fee under specified conditions; prohibiting mobility fees, fee updates, or fee increases from relying solely on motor vehicle capacity; requiring certain mobility fees to be updated within a specified timeframe; specifying

parameters that must or may be included in a mobility fee; specifying criteria to be used by a local government in adopting a mobility plan and mobility fee for transportation mitigation improvements; requiring mobility fees for transportation mitigation improvements to be expended or committed within a specified time period; providing criteria for use by local governments issuing building permits related to mobility fees; encouraging local governments to coordinate certain activities included in mobility plans with other affected local governments for certain purposes; specifying that local governments have the burden of proving that the imposition or amount of a fee or exaction meets certain criteria; prohibiting the courts from using a deferential standard for a specified purpose; amending s. 212.055, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (32) through (52) of section 163.3164, Florida Statutes, are renumbered as subsections (34) through (54), respectively, and new subsections (32) and (33) are added to that section, to read:

163.3164 Community Planning Act; definitions.—As used in this act:

(32) "Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan.

(33) "Mobility plan" means an integrated land use and alternative mobility transportation plan adopted into a local government comprehensive plan that promotes a compact, mixed-use, and an interconnected development served by a multimodal transportation system.

Section 2. Paragraphs (b), (c), (f), and (i) of subsection (5) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(5)

(b) A local government ~~governments~~ shall use professionally accepted studies to evaluate the appropriate levels of service. A local government ~~governments~~ should consider the number and type of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.

(c) A local government ~~governments~~ shall apply the principles, guidelines, standards, and strategies provided in its comprehensive plan ~~use professionally accepted techniques~~

for measuring levels of service when evaluating potential impacts of a proposed development.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.

2. Adoption of an areawide level of service not dependent on any single road segment or other facility function.

3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.

4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.

6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain

areas or districts, or for affordable or workforce housing.

(i) ~~If~~ A local government electing ~~elects~~ to repeal transportation concurrency must~~, it is encouraged to~~ adopt an alternative mobility funding system as provided in s. 163.31803. ~~that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with s. 163.31801 governing impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).~~

Section 3. Section 163.31803, Florida Statutes, is created to read:

163.31803 Mobility plans.—

(1) This section establishes the uniform framework for the adoption and implementation of a mobility plan as an alternative

to transportation concurrency as provided in s. 163.3180(5).

(a) A mobility plan may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permit, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the mobility fees adopted by the local government in the mobility plan.

(b) A mobility plan must comply with the requirements of s. 163.3180(5)(h) and is encouraged to meet the criteria in s. 163.3180(5)(f).

(c) A local government choosing to adopt a mobility plan must adopt the mobility plan and a mobility fee system into its comprehensive plan.

(d) A local government must adopt each mobility plan and mobility fee system by ordinance after conducting at least two public workshops before adoption of the ordinance.

(e)1. A local government may:

a. Adopt a mobility plan and the initial mobility fee system in a single ordinance by a two-thirds vote of the governing body; or

b. Adopt a mobility plan in a single ordinance by a simple majority vote and adopt the initial mobility fee system in a separate ordinance by a two-thirds vote of the governing body.

2. A two-thirds vote of the governing body is not

necessary if the total amount of the new mobility fee system is less than the total of all fees available to be imposed by the local government on a single development to mitigate the transportation impact of the new development or redevelopment. In such case, a simple majority vote of the governing body is sufficient to approve the mobility fee system.

(2) The determination, adoption, and implementation of a mobility fee pursuant to an adopted mobility fee system must comply with this section and s. 163.31801, governing impact fees.

(3) A mobility plan:

(a) May include existing and emerging transportation technologies that reduce dependence on motor vehicle travel capacity.

(b) May not be based solely on adding motor vehicle capacity.

(c) Must reflect modes of travel and emerging transportation technologies reducing reliance on motor vehicle capacity established in the local government's comprehensive plan,

(d) Must identify multimodal projects consisting of improvements, services, and programs which increase capacity needed to meet future travel demands.

(4) A transportation impact fee may not be imposed within the area designated for the imposition of a mobility fee by a

local government mobility plan.

(5) A mobility fee, fee update, or fee increase must be based on the adopted mobility fee schedule and mobility plan, may not rely solely on motor vehicle capacity, and must be used exclusively to implement the mobility plan.

(6) A mobility fee must be updated at least once within 5 years after the date the mobility fee is imposed or its most recent update. A mobility fee that is not updated within the 5 years is void. A local government considering a mobility fee update may not consider annual inflation adjustments or any phased-in fees to meet the requirements of this subsection.

(7) A local government adopting a mobility plan and mobility fee for transportation mitigation improvements must comply with all of the following:

(a) Beginning September 1, 2022, any new mobility fee, fee update, or fee increase must be based on an adopted mobility fee schedule and mobility plan.

(b) In addition to meeting the requirements of s. 163.31801, mobility fees must be calculated using all of the following criteria:

1. Projected increases in population, employment, and motor vehicle travel demand and per person travel demand.

2. Areawide road levels of service or quality of service standards and multimodal quality of service standards for modes of travel included in the mobility plan.

3. Multimodal projects identified in the adopted mobility plan which are attributable to, and meet the travel demands of, new development and redevelopment and which include capacities based on service standards and projected costs.

4. An evaluation of current and future travel conditions to ensure that new development and redevelopment are not charged for backlog and associated capacity deficiencies.

5. An evaluation of the projected increases in per person travel demand and system capacity to calculate the fair share of multimodal capacity and the costs of multimodal projects that are assignable and attributable to new development and redevelopment.

6. Per person travel demand corresponding to the transportation impact assigned to uses included in the mobility fee schedule ordinance based on trip generation, new trips, per person travel demand, excluded travel on limited access facilities, and adjustments for origin and destination of travel.

7. The mobility fee may not be based on recurring transportation costs.

(c) Per person travel demand must be localized, reflecting differences in the need for multimodal projects and travel within urban areas based on reduced trip lengths and the availability of existing transportation infrastructure.

(d) A local government may recognize reductions in per

person travel demand for affordable housing and economic development.

(e) Any calculation of per person travel demand must ensure that new development and redevelopment are not assessed twice for the same transportation impact.

(8) If a mobility fee for a specific transportation mitigation improvement is not expended or committed for an identified project within 6 years after the date it is collected, the mobility fee must be returned to the applicant. For purposes of this subsection, an expenditure is deemed committed if the preliminary design, right-of-way, or detailed design for the project is completed and construction will commence within 2 years after the fee was committed.

(9) A local government issuing a building permit for development within its jurisdiction shall develop an appropriate mobility fee based on the adopted mobility plan and the mobility fee schedule to ensure that the transportation impacts of the new development or redevelopment project are fully mitigated. If multiple local governments seek to implement a mobility fee, an impact fee, or another transportation mitigation exaction within the boundaries of a local government, the per person travel demand must be roughly proportional to the transportation impact of new development and redevelopment and must initially be based on that assessed by the government issuing the development's building permit. Another local government may not charge new

development or redevelopment for the same travel demand, capacity, and improvements assessed by the governmental entity that issued the building permit.

(10) Local governments are encouraged to coordinate the identification of multimodal projects, along with capacity improvements, full costs, and timing of improvements, included in mobility plans with other affected local governments to address impacts both within the boundary of the local governments and are encouraged to identify measurable factors addressing the share of per person travel demand which each local government should assess, the proportion of costs of multimodal projects to be included in the mobility fee calculations, which entity will construct the multimodal projects, and, if necessary, whether the projected future ownership of the multimodal project and underlying facility should be transferred from the affected local government to the local government adopting the mobility fee. Any mobility fee, impact fee, or other transportation mitigation exaction other than the one assessed by the local government issuing the building permits must include the same benefit reductions in per person travel demand for affordable housing, economic development, urban areas, and mixed-use development.

(11) A local government adopting a mobility fee and any other local government assessing a transportation exaction for impacts within or beyond the boundaries of a local government

has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or exaction meets the requirements of this section. A court may not use a deferential standard for the benefit of the local government.

Section 4. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct

infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(41) ~~s. 163.3164(39)~~, s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay

associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

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.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

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.

Section 5. This act shall take effect July 1, 2022.

Impact Fees

From: Douglas J. Sale <dsale@handfirm.com>
Sent: Saturday, February 5, 2022 12:50 PM
To: Kevin D. Obos <kobos@handfirm.com>
Cc: David Cruz <DCruz@flcities.com>; Amy E. Myers <amyers@handfirm.com>; Cole Davis <cdavis@handfirm.com>; Hayward Dykes <hdykes@handfirm.com>
Subject: Impact Fee Credits - Issue, Analysis, Opinion, and Need for Glitch Bill if Issue Keep Popping Up.

David, if you hear of others raising the issue and it becomes a problem, I'd be happy to help if I can. Thanks again for being on tap. Best, Doug.

Kevin, you have said that our client, the City of Callaway, has a developer of a subdivision who is installing customary water distribution mains and wastewater collection gravity lines which he will transfer to the City. The problem is that he is talking about requesting a credit for these facilities against future water and sewer impact fees to be charged houses when building permits are issued. such credits are transferable, potentially to the new lot owners or spec builders. He argues that the transferred facilities will be a "contribution" within the meaning of 163.31801(5)(a) for which credit must be given. However, the next section of that statute, (5)(b), defines certain facilities which if contributed to not generate a credit. The issue is whether a local government must now give a subdivision developer impact fee credits for giving the government the water mains, gravity lines, force mains, and lift stations within the subdivision in exchange for the government accepting maintenance responsibility. In sum, my opinion is no, but I do think the statute could be more artfully worded and if the issue starts arising elsewhere it should my amended.

The pertinent subsections and my reasoning follow:

> ((5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.
>
> (b) If a local government or special district does not charge and collect an impact fee for the general category or class of public facilities or infrastructure contributed, a credit may not be applied under paragraph (a).

From a strict construction of the statute on its face, the answer is unfortunately not crystal clear. Under subsection (5)(b) no credit is due if the "local government does not charge and collect an impact fee for the general category or class of public facilities or infrastructure contributed." So the facial answer turns upon whether the "category or class of public facilities or infrastructure" here is water or sewer systems on the one hand in which case credit must be given because the city does charge impact fees for connection to those systems, or water mains and gravity lines on the other hand in which case no credit must be given because the city does not charge an impact fee to a developer

installing and transferring to the city those mains and lines. There is no basis within the four corners of the statute to answer the question of how narrowly the legislature intended the "category or class of public facilities or infrastructure" to be construed. The legislations Bill Analysis (CS/CS/CS/HB 337 (2021) is of no help. It does not mention the withholding of credit for a contribution of infrastructure for which no impact fee is charged. Regarding the credit itself, the Bill Analysis vaguely states only that credit must be given for "any contribution related to the improvement of public facilities or infrastructure towards impacts on the same type of public facilities for which the contribution was made." That sentence is silly broad.

However, history, common sense, and stepping back for a different perspective do provide an answer. The obvious purpose of mandating a credit is to prevent a local government from double-dipping for the same contribution. Just as obviously, the exclusion of a credit for contributions for which no impact fee is charged is designed to prevent the opposite extreme of the government losing impact fees needed to keep up with growth. The legislative intent to preserve equitable impact fee collections is stated clearly in the beginning of the Act. From that common sense perspective, since no impact fees are charged for the transfer and acceptance of water mains and wastewater gravity lines, lift stations and force mains, no credit should be given.

Additional support for this result flows from the fact that a developer's transfer of the subject facilities is not an exaction. Just the opposite, it is a voluntary transfer of facilities in exchange for the government assuming responsibility to maintain those facilities in the future for the benefit of the developer's effort to sell lots. Pure *assumsit* or contract.

Hopefully the notion of our client's developer will not expand to other developers. If it does, one potential fix might me to add contract language to the credit exception in subsection 5(b):

(b) If a local government or special district does not charge and collect an impact fee for the general category or class of public facilities or infrastructure contributed, or if the facilities are transferred to the local government or special district in exchange for valuable consideration, a credit may not be applied under paragraph (a).

Good luck!

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Residential Infill Zoning

A bill to be entitled

An act relating to local government land development actions; amending ss. 125.022 and 166.033, F.S.; specifying the deficiencies which a county or municipality, respectively, may provide comments on regarding applications for development permits or development orders; amending s. 163.3202, F.S.; requiring local governments to adopt residential infill development standards by a specified date; providing a description of the term "residential infill development"; providing guidelines to be used by certain local governments in developing residential infill development standards; requiring certain local governments to adopt guidelines to be used by applicants seeking areas to be designated as a residential infill development; prohibiting a local government from approving deficient applications; prohibiting a local government from denying applications if the applicant has complied with the regulations; authorizing the process for applicants to appeal application denials; providing timeframes for a local government to issue a final decision; requiring local governments to amend their development regulations and comprehensive plans to incorporate residential infill developments as zoning

classifications; amending s. 553.792, F.S.; specifying the deficiencies over which a local government may provide comments or request information on regarding applications for building permits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 125.022, Florida Statutes, is amended to read:

125.022 Development permits and orders.—

(1)(a) Within 30 days after receiving an application for approval of a development permit or development order, a county must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information.

(b) Once the applicant has provided responses concerning the areas that were deficient, the county may only provide additional comments on the deficiencies that are directly related to the deficiencies that were identified during the first review period or that directly address the responses given by the applicant. The county may also make additional comments

as a result of new information submitted by the applicant.

(c) Within 120 days after the county has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision. The timeframes contained in this subsection do not apply in an area of critical state concern, as designated in s. 380.0552.

Section 2. Subsection (1) of section 166.033, Florida Statutes, is amended to read:

166.033 Development permits and orders.—

(1)(a) Within 30 days after receiving an application for approval of a development permit or development order, a municipality must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information.

(b) Once the applicant has provided responses concerning the areas that were deficient, the municipality may only provide additional comments on the deficiencies that are directly related to the deficiencies that were identified during the first review period or that directly address the responses given by the applicant. The municipality may also make additional comments as a result of new information submitted by the applicant.

(c) Within 120 days after the municipality has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the municipality must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the municipality's decision. The timeframes contained in this subsection do not apply in an area of critical state concern, as designated in s. 380.0552 or chapter 28-36, Florida Administrative Code.

Section 3. Subsection (7) is added to section 163.3202, Florida Statutes, to read:

163.3202 Land development regulations.—

(7) To ensure a uniform process for new development, each local government with $10 million or more in total revenue must adopt residential infill development standards in its land use regulations by January 1, 2023, and each local government with $10 million or more in total revenue after July 1, 2022, must adopt residential infill development standards in its land use regulations within 18 months after reaching the $10 million revenue threshold. The residential infill development standards must be considered in local decisionmaking. A local government may adopt its own residential infill development standards or may use the guidelines set forth in paragraphs (b) and (c) in developing its standards. All residential infill development standards must provide that a residential infill development project that is located within an area that has a basin management action plan adopted under s. 403.067 must comply with the water quality standards established in the basin management action plan.

(a) A residential infill development is an important component and useful mechanism for a local government to promote redevelopment and revitalization. A residential infill development is not intended to promote the premature subdivision of land which exceeds the average densities of the immediate vicinity and produces excessively smaller lots than those found on surrounding parcels, but should consider the current land development patterns within the immediate vicinity. Residential

infill developments are intended to aid in the revitalization of existing communities by encouraging consistent and compatible redevelopment and to promote reinvestment in established neighborhoods and cure blighted parcels. For purposes of this subsection, a residential infill development is an area consisting of a development or subdivision of land designated as such by a local government wherein the dimensional requirements of the land use district are relaxed and the local government review process is expedited.

(b) Local governments must use the following guidelines in developing the residential infill development standards:

1. The size of the land development or subdivision may be below the minimum dimensional requirements of the land use category in which it is located.

2. A residential infill development may not exceed the maximum allowable density established by the local government's comprehensive plan.

3. A residential infill development area must be located in an area with a defined development pattern.

4. A residential infill development area must be located within one or more residential suburban or residential low land use districts.

5. A residential infill development area must be located in an area with sufficient services to avoid future public service deficiencies. A local government, in reviewing an

application for a residential infill development, shall consider the availability of schools, public water, public sewer, road capacities, law enforcement protection, fire protection, emergency medical service, and reasonable proximity to public parks.

6. A residential infill development may be allowed on a parcel that is adjacent to similar development.

7. Lots within a residential infill development must be at least as large as the average lot size in the immediate vicinity.

8. Building setbacks may be greater than or equal to the average building setback found on abutting parcels. Building setbacks may also be consistent with the dimensional requirements of the land use district as specified in the local government's land development code.

9. If a residential infill development abuts a roadway stub-out, the new roadways built must connect to the roadway stub-out.

10. Stormwater retention facilities within a residential infill development may not be constructed to degrade or adversely affect the existing character of the immediate vicinity.

11. A residential infill development may not be larger than 120 acres. Developments shall not be phased or incrementally expanded with the intent to circumvent the acreage

limit.

12. Building types within the residential infill development may only include types that exist on any parcel in the immediate vicinity, but may not include mobile homes.

(c) Each local government must adopt guidelines to be used by applicants seeking designations as residential infill developments. The guidelines must provide procedures for the review of applications. The guidelines must require that the applicant:

1. Consider whether the residential infill development recognizes the surrounding pattern of development and whether the residential infill development is contrary to the density and dimensional requirements of land tracts that abut the development.

2. Consider the surrounding pattern of development, including existing road layout, densities, lot sizes, and setbacks of parcels and developments that abut the subject site.

3. Confirm the following in the designation application:

a. The residential infill development connects or will connect to central water and sewer.

b. Law enforcement for the local government jurisdiction has no objection to the residential infill development.

c. The average response time of the local government fire and emergency medical services and the area of the residential infill development is within the average response times.

d. At least one park or playground is located within 2 miles of the residential infill development.

e. The schools serving the area of the residential infill development have sufficient capacity for the residential infill development or concurrency provisions have been made to ensure adequate capacity.

f. The roads within the residential infill development will be constructed to conform with the existing roadway network found in the immediate vicinity. New roads will be required to connect to stub-outs that were originally constructed to connect new development with existing developments.

g. The sidewalks within the residential infill development will be installed along one side of collector and arterial roads when existing sidewalk infrastructure is located within 100 feet of the development.

h. Minimum lot sizes will be determined by the average lot size of parcels in the immediate vicinity or at least 5,500 square feet, whichever is greater.

i. Infill development will be either determined by the dimensional requirements established for the land use district in which the site is located or determined by the average setback and height of existing structures on parcels in the immediate vicinity.

(d)1. A local government may not approve a deficient application as a residential infill development. Where

deficiencies exist, the applicant bears the burden to prove the benefits of the residential infill development outweigh the deficiencies in services.

2. A local government may not deny an applicant's request for designation as a residential infill development if the applicant has complied with the development standards of this subsection.

(e) An applicant may appeal a denial of an application through an administrative appeal. The local government must render a decision within 30 days after receiving the administrative appeal. If the local government fails to issue a final decision within 30 days, the application is deemed approved.

(f) Each local government must amend its development regulations to include residential infill development as a zoning classification and must incorporate it as an appropriate land use classification under the local government comprehensive plan.

Section 4. Paragraph (a) of subsection (1) of section 553.792, Florida Statutes, is amended and paragraph (c) is added to subsection (2) of that section, to read:

553.792 Building permit application to local government.—

(1)(a) Within 10 days after ~~of~~ an applicant submits ~~submitting~~ an application to the local government, the local government shall advise the applicant what information, if any,

is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. However, the local government may only request more information on the additional information provided to the local government by the applicant and may not make new comments on the original application. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days after ~~following~~ receipt of a completed application.

(2)

(c) Notwithstanding any local ordinance that may otherwise

apply to the contrary, if an applicant provides additional information based on deficiencies identified by the local government in the application, the local government may only provide additional comments that are directly related to the deficiencies that were identified during the first review period or that directly address the responses given by the applicant. The local government may also make additional comments as a result of new information submitted by the applicant.

Section 5. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 739 Local Government Land Development Actions
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N, As CS	Darden	Miller
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Community Planning Act (Act) governs how local governments create and adopt their local comprehensive plans. The provisions of the Act are implemented at the local level by land development regulations, such as zoning and other housing-related ordinances, adopted by each county and municipality to be consistent with and to implement their adopted comprehensive plans. A development permit is any official action of a local government that effectively authorizes the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances. A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.

The bill prohibits local governments that have noted a deficiency in an application for a development order, development permit, or building permit, from requesting additional information from the applicant beyond information on the noted deficiency or new issues raised by the applicant. This provision applies to building permit applications even if a local government ordinance would otherwise allow additional requests for information.

The bill requires each local government with total revenues of $10 million or more to adopt to adopt residential infill development (RID) standards in its local land use regulations by January 1, 2023. The standards must include a list of guidelines for determining whether a development qualifies as a RID, guidelines to assist an applicant in determining if an area qualifies as a RID, and requires the applicant consider certain factors. A local government may not approve an application for a RID if it contains any deficiencies, but must approve any request for a RID that shows compliance with the general intent and development standards of this provision. Denials of an application for a RID are appealed to the local government planning commission. The bill requires each local government to amend its development regulations to include residential infill development as a zoning classification and incorporate the classification as an appropriate land use classification under the local government's comprehensive plan.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act (Act).[2] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.[3] A housing element is required as part of every comprehensive plan. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."[4]

Municipalities established after the effective date of the Act must adopt a comprehensive plan within three years after the date of incorporation.[5] The county comprehensive plan controls until a municipal comprehensive plan is adopted.[6]

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[7]

Land Development Regulations

Land development regulations are the method by which local governments implement their comprehensive plan. Within one year of adoption or revision of its comprehensive plan, a county or municipality must adopt or amend their land development regulations to ensure they are consistent with and implement the plan.[8]

Local land development regulations must contain specific and detailed provisions for implementing the adopted comprehensive plan, and shall, at a minimum:

- Regulate the subdivision of land;
- Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space;
- Provide for protection of potable water wellfields;
- Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensure the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulate signage;

[1] *See* ch. 85-55, s. 1, Laws of Fla.
[2] *See* ch. 2011-139, s. 17, Laws of Fla. *See also* s. 163.3161(1), F.S. The Act is codified as ch. 163, part II, F.S.
[3] S. 163.3161(4), F.S.
[4] S. 163.3177(6)(f)1.g., F.S.
[5] S. 163.3167(3), F.S.
[6] *Id*.
[7] S. 163.3202, F.S.
[8] S. 163.3202(1), F.S.

- Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177, F.S. and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development;[9]
- Ensure safe and convenient onsite traffic flow, considering needed vehicle parking;
- Maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178, F.S.; and
- Incorporate preexisting development orders identified pursuant to s. 163.3167(3), F.S.[10]

Local governments are encouraged to use "innovative land development regulations," such as transfers of development rights, incentive and inclusionary zoning, planned unit development, impact fees, and performance zoning.[11] All land development regulations must be combined and complied into a single land development code for the jurisdiction. A general zoning code is not required if the local government's adopted land development regulations comply with statute.[12]

The Department of Economic Opportunity (DEO), as the state land planning agency, is responsible for adopting rules for review and schedules for adoption of land development regulations.[13] DEO may review land development regulations if there are reasonable grounds to believe a local government has not adopted one or more required land development regulations.[14] DEO must provide written notice to the local government within 30 days stating whether the local government has adopted the required regulations.

Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[15] A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[16]

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specifying the deficiencies.[17] If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.[18]

If a county or municipality requests additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must:
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's first request;
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 10 days of receiving the information, if the request is the county or municipality's second request; and
- Deem the application complete within 10 days of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or

[9] A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.
[10] S. 163.3202(2), F.S.
[11] S. 163.3202(3), F.S.
[12] *Id*.
[13] S. 163.3202(6), F.S.
[14] S. 163.3202(4), F.S.
[15] S. 163.3164(16), F.S.
[16] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[17] Ss. 125.022(1) and (2), and 166.033 (1) and (2), F.S.
[18] *Id.*

municipality's time limitations in writing, if the request is the county or municipality's third request.[19]

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.[20] If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant may request the county or municipality proceed to process the application for approval or denial.[21] If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[22]

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[23]

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.[24]

Building Permit Applications

Local governments are required to review certain building permit applications within a specified time period after receiving the application.[25] These permit types include, but are not limited to, construction or installation of an accessory structure, installation of an alarm system, a nonresidential building less than 25,000 square feet, electric, plumbing, mechanical, or roofing systems, master building permits, or the construction of single-family residential buildings.[26]

When a local government receives an application for a building permit, except for master building permits, and single-family residential buildings, the local government must: [27]

- Inform the applicant within 10 days of receiving the application what additional information, if any, is needed to complete the application;[28]
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application;[29] and
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.[30]

These time limitations do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[31]

Local governments are required to reduce the permit fee for any building permit application by 10 percent of the original permit fee for each business day that a local government fails to meet the time

[19] Ss. 125.022(2)(b)-(d) and 166.033(2)(b)-(d), F.S.
[20] Ss. 125.022(2)(d) and 166.033(2)(d), F.S.
[21] Ss. 125.022(2)(e) and 166.033(2)(e), F.S.
[22] Ss. 125.022(3) and 166.033(3), F.S.
[23] Ss. 125.022(2)(a) and 166.033(2)(a), F.S.
[24] Ss. 125.022(1) and 166.033(1), F.S.
[25] S. 553.792, F.S.
[26] S. 553.792(2), F.S.
[27] S. 553.792(1), F.S.
[28] If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
[29] If additional information is needed the local government must specify what additional information is necessary.
The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
[30] This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.
[31] S. 553.792(2), F.S.

period required for building permit application approval by statute or local ordinance.[32] This requirement does not apply if the local government and the applicant have agreed to an extension of time to process the permit.

Growth Policy Act

Enacted in 1999, the Growth Policy Act (GPA)[33] encourages state and local governments to work with private sector entities to promote and sustain urban cores by encouraging infill development and redevelopment.[34] The GPA allows local governments to designate areas within their jurisdiction as "urban infill and redevelopment areas" for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation, and land use incentives.[35] Each urban infill and redevelopment area must:

- Have access to public services such as water and wastewater, transportation, schools, and recreation (or be scheduled to have access to these services in the local government's adopted five-year schedule of capital improvements)
- Suffer from pervasive poverty, unemployment, and general distress as defined by s. 290.0058, F.S.;
- Have a proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete that is higher than the average for the local government;
- Have a majority of its area with one quarter of a mile of a transit stop; and
- Either include or be adjacent to a community redevelopment area, brownfield, enterprise zone, or Main Street programs, or have been designed by state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community programs or similar programs.[36]

Local governments are encouraged to work with community partners, such as neighborhood groups, financial institutions, religious organizations, businesses, schools, and residents, to design and implement an urban infill and redevelopment plan.[37] The plan must demonstrate the local government and community's commitment to comprehensively address the problems within the urban infill and redevelopment area and identify activities and programs to accomplish locally identified goals to improve both the residential and commercial quality of life in the area.[38] The plan may be a new plan drafted for the area, or use an existing plan (or combination of plans) developed for a community redevelopment area, Florida Main Street program area, Front Porch Florida Community, sustainable community, enterprise zone, or neighborhood improvement district. Each plan must:

- Contain a map of the area;
- Confirm the area is within an area designated for urban uses in the local government's comprehensive plan;
- Identify, map, and provide a framework for coordinating infill and redevelopment programs with other revitalization programs (such as enterprise zones, community redevelopment agencies, brownfield areas, downtown redevelopment districts, neighborhood improvement districts, and historic preservation districts);
- Include a memorandum of understanding between the district school board and the local government regarding public school facilities located within area to identify how the school board will prioritize enhancing public school facilities and programs in the area (including the reuse of existing buildings for schools within the area);
- State the community preservation and revitalization goals and projects for each neighborhood in the area and discuss how those goals and projects may be implemented;
- Identify how the local government and community-based organizations intend to implement affordable housing programs, including, but not limited to, economic and community development programs administered by federal and state agencies, within the area;

[32] S. 553.792(1)(b), (2)(b), F.S.
[33] Ss. 163.2511-163.2520, F.S.
[34] S. 163.2511, F.S.
[35] S. 163.2517(1), F.S.
[36] S. 163.2514(2), F.S.
[37] S. 163.2517(2), F.S.
[38] S. 163.2517(3), F.S.

- Identify strategies for reducing crime;
- Provide guidelines for adopting land development regulations specific to the urban infill and redevelopment area which include, for example, setbacks and parking requirements appropriate for urban development.
- Identify and map any existing transportation concurrency exception areas and any relevant public transportation corridors designated by a metropolitan planning organization in its long-range transportation plans or by the local government in its comprehensive plan for which the local government seeks designation as a transportation concurrency exception area;
- Adopt a package of financial incentives to encourage new development, expansions of existing development, and redevelopment;
- Identify how activities and incentives will be coordinated and what administrative mechanisms the local government will use for the coordination;
- Identify how partnerships with the financial and business community will be developed;
- Identify the governance structure that the local government will use to involve community representatives in the implementation of the plan; and
- Identify performance measures to evaluate the success of the local government in implementing the plan.[39]

The local government may adopt the selected plan by ordinance.[40] If the plan is adopted, the local government must amend its comprehensive plan to delineate the boundaries of the urban infill and redevelopment area within the future land use element.[41]

A local government that has adopted a plan under the Growth Policy Act may use revenue bonds and tax increment financing in the same manner as community redevelopment agencies for the purposes of implementing the plan as well as exercise the powers of a neighborhood improvement district, including the authority to levy special assessments.[42] These powers are lost if the combined amount of annual residential, commercial, and institutional development within the area does not increase by at least ten percent during the local government's seven-year comprehensive plan review cycle.[43]

Effect of Proposed Changes

The bill provides that once a local government has noted deficiencies in an application for a development order, development permit, or building permit, the local government may only request additional information on the noted deficiency or new issues raised by the applicant and may not request additional information on the original application. This provision applies to building permit applications even if a local government ordinance would otherwise allow additional requests for information.

The bill requires each local government with $10 million or more in total revenue to adopt residential infill development (RID) standards in its local land use regulations by January 1, 2023. If a local government's revenue exceeds $10 million in any year after July 1, 2022, the local government is required to adopt standards with 18 months of reaching that threshold. The adopted standards must be considered in local land use decision making. Local governments may adopt their own RID standards or use the guidelines established by the bill, but in either case must provide that a RID project that is within an area that has a basin management action plan adopted pursuant to s. 403.067, F.S. must comply with the water quality standards established in such basin management action plan.

The bill defines a RID as an area consisting of a development or subdivision of land designated by a local government where the dimensional requirements of the land use district are relaxed and the local government review process is expedited. The bill requires each local government to adopt the following guidelines as part of their standards:

[39] S. 163.2517(3)(a)-(n), F.S.
[40] S. 163.2517(5), F.S.
[41] S. 163.2517(4), F.S.
[42] Ss. 163.2520(1), (2), F.S.
[43] S. 163.2517(6)(a), F.S.

- The size of the land development or subdivision may be below the minimum dimensional requirements otherwise applicable for the land use category where it is located;
- The RID may not exceed the maximum allowable density established by the local government's comprehensive plan;
- The RID must be located in an area with a defined development pattern;
- A RID must be located within one or more residential suburban or low land use districts;
- A RID must be located within an area with sufficient services to avoid future public service deficiencies, including schools, public water and sewer, road capacities, law enforcement, fire, emergency medical services, and reasonable proximity to public parks;
- A RID must be on a parcel that is adjacent to similar development;
- Lots within a RID must be at least as large as the average lot size in the immediate vicinity;
- Building setbacks must at least equal to those on abutting parcels and be consistent with the dimensional requirements of the land use district specified in the local government's comprehensive plan;
- If a RID abuts a roadway stub-out, new roadways constructed in the RID must connect to the stub-out;
- Stormwater retention facilities within a RID may not be constructed to degrade or adversely affect the existing character of the immediate vicinity;
- A RID may not be larger than 120 acres and development may not be phased or incrementally expanded to circumvent the average limit; and
- Building types within the RID may only include types that exist on any parcel in the immediate vicinity (excluding mobile homes).

The bill also requires each local government to adopt guidelines to be used by applicants seeking to construct a RID. The guidelines require the applicant to:

- Consider the impact of the RID on the surrounding pattern of development and whether the RID is consistent with the density and dimensional requirements of adjoining land tracts;
- Consider the surrounding pattern of development; and
- Confirm certain types of concurrency in the designation application.

The bill states that a local government may not approve a deficient application for a RID. The bill states that the applicant is responsible for showing that the benefits of the development are sufficient to outweigh any deficiencies in services. The local government must approve any request for a RID that shows compliance with the development standards stated in the new statutory provision. Denials of an application for a RID are appealed to the local government planning commission.

The bill requires each local government to amend its development regulations to include residential infill development as a zoning classification and incorporate the classification as an appropriate land use classification under the local government's comprehensive plan.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.022, F.S., concerning development orders and permits issued by counties.

Section 2: Amends s. 166.033, F.S., concerning development orders and permits issued by municipalities.

Section 3: Amends s. 163.3202, F.S., requiring local governments to adopt residential infill development standards as part of their land development regulations.

Section 4: Amends s. 553.792, F.S., concerning building permit applications to local governments.

Section 5: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on local governments to the extent local governments must amend their comprehensive plans to incorporate residential infill development standards before January 1, 2023.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to adopt residential infill development standards in its land use regulations by January 1, 2023. However, an exemption may apply, as laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 1, 2, and 4 of the bill may result in delays in receiving permit approval, to the extent the provisions of the bill result in applicants needing to resubmit rejected permit applications that contain deficiencies that may have been corrected if the local government could have asked for additional information.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2022, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revises the requirement for local governments to adopt RID standards to only apply to local governments with $10 million or more in total

revenue, provides safeguards for water quality standards, and replaces the checklist in the bill as filed with a series of statements that the developer must confirm.

The analysis is drafted to the committee substitute as passed by the Local Administration & Veterans Affairs Subcommittee.

Key Dates

FLORIDA LEAGUE OF CITIES

2022 - 2023 Key Legislative Dates

September

16	FLC Legislative Policy Committee Meetings (Round 1), Embassy Suites Lake Buena Vista South, Kissimmee, FL

October

7	FLC Legislative Policy Committee Meetings (Round 2), Embassy Suites Lake Buena Vista South, Kissimmee, FL

November

8	Florida's General Election
30 – December 2	FLC Legislative Conference, Embassy Suites Lake Buena Vista South, Kissimmee, FL (Legislative Policy Committees meet December 1)
16-19	NLC City Summit, Kansas City, MO

March

7	Regular Legislative Session Convenes
26-28	NLC Congressional City Conference, Washington, D.C.

April

4-5	FLC Legislative Action Days, Tallahassee, FL

May

5	Last Day of Regular Legislative Session

Home Rule Hero Criteria

Do you want to become a HOME RULE HERO?

AS THE ADAGE GOES, "ALL POLITICS IS LOCAL." Successful advocacy starts at home, not in Tallahassee. No one – not even a professional lobbyist – can tell your community's story better than you. Your involvement helps the League's legislative team turn the abstract into concrete. It is essential to help legislators understand how their decisions may impact their communities back home.

The League appreciates the individual advocacy efforts undertaken by municipal officials throughout the state. Each year, there are some League members who make an extraordinary effort; people who stand out for their high level of participation and effectiveness. The Home Rule Hero Award was created to acknowledge and thank them for their efforts. Hundreds of municipal officials have been recognized as "Home Rule Heroes" since the award's inception in 2009, and we thank you!

Home Rule Hero Award recipients are selected by the League's legislative team following each legislative session.

For the award, the most important criteria are timely responses and actions to FLC's Legislative Alerts, and notifying FLC staff of communications with your legislators.

Other exceptional efforts are:

- Attending the Florida League of Cities' Legislative Action Days in Tallahassee and Legislative Conference.
- Testifying before a House or Senate committee on an FLC priority issue, when a call to action has been sent out.
- Participating in FLC's Monday Morning "Call-ins" during session and on FLC's pre-and post-legislative session webinars.
- Participating in FLC's Legislator "Key Contact" program.
- Meeting legislators in their districts or in Tallahassee.
- Responding to FLC requests for information and data about how proposed legislation will specifically impact your city (telling your city's "story").
- Speaking at local legislative delegation meetings to discuss FLC municipal issues.
- Setting up opportunities for legislators and their staff to attend a city council meeting or special event; tour a park, project or facility; and attend a local league meeting.
- Serving on a FLC legislative policy committee.
- Participating in a Federal Action Strike Team fly-in to Washington, D.C.
- During an election year, providing opportunities for candidates for legislative offices to learn about your city and its issues, and introducing candidates to key city stakeholders or those in your professional network.

For more information on these activities and ways to step up your advocacy game, please contact Allison Payne at *apayne@flcities.com*.

FLC
FLORIDA LEAGUE OF CITIES

Notes

Notes