LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

Friday, October 6, 2023
10:00 a.m. – 2:00 p.m. EDT

Sun 4-6 Meeting Room
Gaylord Palms Resort & Convention Center
6000 West Osceola Parkway, Kissimmee, FL 34746

FLC Staff Contact: David Cruz

FLC
FLORIDA LEAGUE OF CITIES

Agenda

Land Use & Economic Development Legislative Policy Committee
Friday, October 6, 2023, from 10:00 a.m. to 2:00 p.m.
Gaylord Palms Resort & Convention Center – Meeting Room: Sun 4-6
6000 West Osceola Parkway, Kissimmee, FL 34746

AGENDA

I. Introduction & Opening Remarks ..... **Chair Bill Schaetzle**
Councilman, City of Niceville

II. Potential 2024 Priority and Policy Issues

A. Sovereign Immunity ..... **David Cruz, FLC Staff**

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

C. Bert Harris Act Shade Meetings ..... **David Cruz, FLC Staff**

D. Unsafe Structures/Historic Preservation ..... **David Cruz, FLC Staff**

E. SB 250 Preemption on Land Development Regulations ..... **David Cruz, FLC Staff**

F. SB 102 Live Local Act ..... **David Cruz, FLC Staff**

III. Ranking of Policies ..... **David Cruz, FLC Staff**

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

A. FLC Policy Committee Process for 2023-2024

B. Key Legislative Dates

C. Home Rule Hero Criteria

D. Key Contacts – Click HERE to sign-up

V. Closing Remarks ..... **Chair Bill Schaetzle**
Councilman, City of Niceville

VI. Adjournment

Breakfast and Lunch provided by the Florida League of Cities

WiFi Available
Network: Gaylord_Conference
Access Code: Policy2023

Committee Roster

FLORIDA LEAGUE OF CITIES

2023-2024 Legislative Policy Committee
Land Use & Economic Development

Staffed by: David Cruz, Legislative Counsel

CHAIR:

The Honorable Bill Schaetzle
Councilman, City of Niceville

VICE CHAIR:

The Honorable Dorothea Taylor Bogert
Mayor, City of Auburndale

MEMBERS:

Jeremy Allen
Village Manager, Village of Tequesta

Manny Anon, Jr.
City Attorney, City of Melbourne

The Honorable Antonio Arserio
Commissioner, City of Margate

Lana Beck
Communications and Govt Relations Administrator, City of Pinellas Park

The Honorable Rick Belhumeur
Commissioner, City of Flagler Beach

The Honorable Darla Bonk
Councilperson/Mayor Pro Tem, City of Fort Myers

Michael Bornstein
Village Manager, Village of Palm Springs

The Honorable Julie Botel
Councilmember, City of Riviera Beach

Pegy Boule-Washington
CRA Administrator, City of Belle Glade

The Honorable Woody Brown
Mayor, City of Largo

The Honorable Richard Bryan
Commissioner, City of Daytona Beach Shores

The Honorable Traci Callari
Commissioner, City of Hollywood

Leondrae D. Camel
City Manager, City of South Bay

The Honorable Jolien Caraballo
Vice Mayor, City of Port St. Lucie

The Honorable Theresa Carli Pontieri
Council Member, City of Palm Coast

The Honorable Joy Carter
Commissioner, City of Coral Springs

The Honorable Charles (Chase) Chambliss
Mayor, Town of Palm Shores

The Honorable Jeremy Clark
Vice Mayor, City of Davenport

The Honorable Gary Coffin
Commissioner, Town of Longboat Key

Valentina Cortes
Legislative Analyst, City of Doral

Steven Cover
Director of Planning, City of Sarasota

The Honorable Gloria A. Cox
Mayor, City of Monticello

Revised 9/28/2023

John D'Agostino
Town Manager, Town of Lake Park

The Honorable Brad Dantzler
Mayor, City of Winter Haven

The Honorable Jack Dearmin
Commissioner, City of Lake Alfred

The Honorable Alex Fernandez
Commissioner, City of Miami Beach

Kelly Flowers Hass
Marketing Director, Jones Edmunds, Business Watch

The Honorable Josh Fuller
Vice-Mayor, Town of Bay Harbor Islands

Robert Garlo
Town Manager, Town of Jupiter Island

The Honorable Anne Gerwig
Mayor, Village of Wellington

The Honorable Mindy Gibson
Councilwoman, City of Satellite Beach

The Honorable Juan Gonzalez
Commissioner, City of Pahokee

The Honorable Lawrence Gordon
Council Member, Town of Haverhill

The Honorable Linda Hudson
Mayor, City of Fort Pierce

The Honorable Dan Janson
Councilman, City of Jacksonville Beach

Narinah Jean-Baptiste
Attorney, Weiss Serota Helfman Cole & Bierman

The Honorable Kenny Johnson
Councilman, City of Palm Bay

The Honorable Debra Jones
Council President, City of Williston

The Honorable Greg Langowski
Vice Mayor, City of Westlake

R. Max Lohman
City Attorney, City of Palm Beach Gardens

The Honorable Karen Lythgoe
Mayor, Town of Lantana

The Honorable Zayteck Marin
Commissioner, City of Belle Glade

The Honorable Linette Matheny
Council Member, City of St. Cloud

Sara Maxfield
Economic & Business Development Manager, City of Riviera Beach

The Honorable Debbie McDowell
Commissioner, City of North Port

The Honorable Matthew McMillan
Deputy Mayor, City of Longwood

The Honorable Joseph McMullen
Commissioner, Town of Oakland

The Honorable Michael Miller
Vice-Mayor, City of Sanibel

The Honorable Ashira Mohammed
Mayor, Town of Pembroke Park

The Honorable Nick Pachota
Mayor, City of Venice

The Honorable John Penny
Vice-Mayor, City of Holly Hill

The Honorable Valli Perrine
Commissioner, City of New Smyrna Beach

Revised 9/28/2023

The Honorable Trish Pfeiffer
Commissioner, City of Bartow

The Honorable Albert Polk
Commissioner, City of South Bay

The Honorable Angela Raymond
Mayor Pro Tem, City of Cape Canaveral

The Honorable Chelsea Reed
Mayor, City of Palm Beach Gardens

The Honorable Patricia Reed
Vice Mayor, City of Pinellas Park

The Honorable Kevin Reid
Commissioner, City of DeLand

The Honorable Thomas Reid
Vice Mayor, City of South Pasadena

The Honorable Betty Resch
Mayor, City of Lake Worth Beach

The Honorable Marie Rosner
Commissioner, Town of Jupiter Inlet Colony

Kimberly Rothenburg
City Attorney, City of West Palm Beach

The Honorable Dylan Rumrell
Vice Mayor, City of St. Augustine Beach

Shari Simmans
Economic Development Director, City of DeBary

The Honorable Alexander Smith
Commissioner, City of Apopka

The Honorable Jordan Smith
Commissioner, City of Lake Mary

The Honorable Joy Smith
Commissioner, City of West Park

The Honorable William (Bill) Steinke
Councilmember, City of Cape Coral

The Honorable Sarah Stoeckel
Councilmember, City of Titusville

The Honorable April Sutton
Council Member, City of Mary Esther

The Honorable Christa Tanner
Council Member, City of Brooksville

The Honorable Judith Thomas
Commissioner, Town of Lake Park

The Honorable Debbie Trice
Commissioner, City of Sarasota

Steven Weathers
Director, Economic Development, City of Fort Myers

The Honorable Morris West
Commissioner, City Of Haines City

The Honorable Marc Wigder
Councilperson, City of Boca Raton

The Honorable Normita Woodard
Mayor Pro-Tem, Dade City

Sovereign Immunity

Sovereign Immunity (Opposed)

CS/HB 401 (Beltran) and **SB 604** (Gruters) would have increased the statutory limits on liability for tortclaims against the state and its agencies and subdivisions (which include cities). The current statutory limits for claims are $200,000 per person and $300,000 per incident. CS/HB 401 would have increasedthe caps for damages against state and local government entities to $2,500,000 per person and $5,000,000 per incident. SB 604 would have increased the caps to $400,000 per person and $600,000per incident. (Cruz)

A bill to be entitled

An act relating to sovereign immunity; amending s. 768.28, F.S.; revising the statutory limits on liability for tort claims against the state and its agencies and subdivisions; revising requirements for a government entity to settle a claim or judgment; revising the timeframe within which the appropriate agency must make final disposition of a claim after it is filed to prevent the claim from being deemed denied; revising exceptions relating to instituting actions on claims against the state or one of its agencies or subdivisions and to the statute of limitations for such claims; reenacting ss. 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, F.S., to incorporate the amendments made to s. 768.28, F.S., in references thereto; providing applicability; providing an effective date.

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

Section 1. Subsection (5), paragraphs (a) and (d) of subsection (6), and subsection (14) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5)(a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $2,500,000 ~~$200,000~~ or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $5,000,000 ~~$300,000~~. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this section ~~act~~ up to $2,500,000 or $5,000,000, as applicable. The ~~$200,000 or $300,000, as the case may be; and that~~ portion of the judgment

that exceeds these amounts may be reported to the Legislature and~~, but~~ may be paid in part or in whole ~~only~~ by further act of the Legislature.

(b) Notwithstanding the limited waiver of sovereign immunity provided in paragraph (a), a subdivision of the state may agree ~~herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided,~~ to settle a claim made or a judgment rendered against it in excess of the waiver provided in paragraph (a) without further action by the Legislature.~~, but~~ The state or an agency or a subdivision thereof may ~~shall~~ not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the ~~$200,000 or $300,000~~ waiver provided in paragraph (a) ~~above~~.

(c) The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(d) ~~(b)~~ A municipality has a duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly based on the availability of adequate equipment to its municipal law enforcement officers and relevant state and federal laws. If the governing body of a municipality or a person authorized by the

governing body of the municipality breaches that duty, the municipality is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damages proximately caused by the municipality's breach of duty. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, county, or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 4 ~~3~~ years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing; except that, if:

1. Such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability; ~~or~~

2. Such action is for wrongful death, the claimant must present the claim in writing to the Department of Financial

Services within 2 years after the claim accrues; or

3. Such action arises from a violation of s. 794.011 involving a victim who was younger than the age of 16 at the time of the act, the claimant may present the claim in writing at any time pursuant to s. 95.11(9). This subparagraph applies to a claim accruing at any time but shall also be construed in accordance with s. 95.11(9) to apply only to claims which would not have been time barred on or before July 1, 2010.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement payment, close of discovery or commencement of trial, whichever is sooner; provided the ability to plead setoff is not precluded by the delay. This setoff shall apply only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney's fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for

double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. Except as provided otherwise in this subsection, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 3 ~~6~~ months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions and in wrongful death actions, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The statute of limitations for medical malpractice actions and wrongful death actions is tolled for the period of time taken by the Department of Financial Services or the appropriate agency to deny the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that:

(a) An action for contribution must be commenced within the limitations provided in s. 768.31(4) ~~;, and~~

(b) An action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(4); and

(c) An action arising from any act constituting a violation of s. 794.011 involving a victim who was younger than the age of 16 at the time of the act may be commenced at any time pursuant to s. 95.11(9). This paragraph applies to a claim accruing at any time as long as such claim would not have been time barred on or before July 1, 2010, under s. 95.11(9).

Section 2. Sections 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 768.28, Florida Statutes, in references thereto.

Section 3. Except as otherwise expressly provided herein, this act applies to claims accruing on or after October 1, 2024.

Section 4. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Sovereign Immunity
SPONSOR(S): Civil Justice Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 4 N, As CS	Mathews	Jones
2) Appropriations Committee		Willson	Pridgeon
3) Judiciary Committee			

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/HB 401:

- Increases the sovereign immunity caps for damages against state and local government entities to $2,500,000 per person and $5,000,000 per incident.
- Allows a subdivision of the state to settle a claim and pay the settled amount without the need for a claim bill.
- Eliminates any statute of limitations for filing a claim against a state or 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.
- Increases the time limitation for filing a claim from three years to four years after the claim accrues.
- 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.

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, 2024. 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 the 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 the 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. 1, 2023).
[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.) (internal punctuation omitted).
[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 pursued 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. Testifying witnesses are sworn and subject to cross-examination.[21] A respondent 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]

Alternatively, 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 $2,500,000 per person, and from $300,000 to $5,000,000 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 would be able to present his or her claim in writing at any time and 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 would be able to bring his or her claim at any time against a government entity, just as if the defendant were a private party.

The bill increases the amount of time for a claimant to file a claim from three years after the date of the incident to four years. 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 provides an effective date of October 1, 2024. 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, 2024.

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 sovereign immunity limits and a local government's ability to settle claims without

regard to any statutory limit on damages under s. 768.28, F.S., is indeterminate. However, local government expenditures would likely increase for settlements, awards, and other legal costs.

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 February 9, 2023, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute increased the existing sovereign immunity caps for damages against state and local government entities to $2,500,000 per person and $5,000,000 per incident.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

Mobility Plans

Alternative Mobility Funding Systems (Supported)

CS/CS/HB 235 (Robinson, W.) and **SB 350** (Brodeur) would have provided clarity to local governmentadoption of a mobility plan and a mobility fee system. The bills would have prohibited a transportation impact fee or fee that is not a mobility-based fee from being imposed within the area that is within amobility plan. The bills would have required mobility fees to be updated every five years once adoptedor updated. The bills outlined the comprehensive requirements a local government would have had tofollow in implementing the mobility plan and mobility fee system. In addition, the bills made a revisionto the impact fee statute that was substantially amended during the 2021 Legislative Session. (Cruz)

2023 FLORIDA LEAGUE OF CITIES LEGISLATIVE ISSUE BACKGROUND

Mobility Plans

Priority Statement:
The Florida League of Cities SUPPORTS legislation that defines and clarifies mobility plans in order to provide a clear and concise regulatory framework for Florida cities to acquire, construct and implement both traditional and alternative modes of transportation.

Background:
In 2009, the state convened a multi-member panel to look at alternatives to transportation concurrency. That panel investigated options that would specifically encourage and facilitate urban infill and redevelopment rather than simply perpetuating then-current practices, which focused on development everywhere.

In 2013, the Legislature further refined the existing transportation mitigation systems under Florida law, culminating with the creation of mobility plans and fees as a legally viable alternative to transportation concurrency. Three types of systems were identified in statute: concurrency, mobility plan with an adopted mobility fee and non-mobility fee-based systems. However, the revised legislation provided little guidance specific to mobility plans, and no new definitions were provided in statute.

A mobility plan identifies various multimodal projects necessary to permit redevelopment, infill projects, and development. A mobility fee is a one-time fee paid by a developer to a municipality to cover the costs of the improvements necessary to fully mitigate the development's traffic impact on the transportation system. Mobility fees must be calculated based on the multimodal projects adopted in the Mobility Plan and must be used to fund the identified multimodal projects in the Plan. Mobility fees were established by the Legislature to provide developers a simplified alternative to transportation concurrency, proportionate share and road impact fees. Therefore, a mobility fee is charged in lieu of an impact fee. Mobility fees are not a tax, and they are not charged to existing homes, businesses or property, unless there is an addition, change of use, expansion, modification or redevelopment that requires issuance of a building permit and generates additional travel demand above the existing use of property. Additionally, unlike transportation (or "road") impact fees, mobility fees are not limited to expanding vehicular lane miles or road capacity. Mobility fees may be expended on any transportation project in the mobility plan, including roads.

The proposed mobility legislation, if adopted, would accomplish three major objectives to the benefit of both municipalities and developers:

Contact: David Cruz, Legislative Counsel – 850.701.3676 – dcruz@flcities.com

1. It Prohibits the imposition of a transportation (road) impact fee within the area designated for the imposition of a mobility fee through a mobility plan. No double impact fee charge.
2. The mobility fee, as adopted, MUST fully mitigate the development's transportation impacts.
3. In a mobility plan area only a mobility fee charged by the local government issuing the development's building permits may be collected. Another local government may NOT charge for the same travel demand.

Since 2013, roughly 65 cities and 18 counties have adopted or are in various stages of approval or consideration for adoption of a mobility plan or mobility fee.

Absent additional legislative guidance, city ordinances on mobility plans and mobility fees are subject to attack over differing legal interpretations of the current state statute. Therefore, the Florida League of Cities supports legislation that provides clear guidelines for the creation and adoption of mobility plans and mobility fees.

Contact: David Cruz, Legislative Counsel – 850.701.3676 – dcruz@flcities.com

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 235 Alternative Mobility Funding Systems
SPONSOR(S): Ways & Means Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Mwakyanjala	Darden
2) Ways & Means Committee	23 Y, 0 N, As CS	LaTorre	Aldridge
3) Commerce Committee			

SUMMARY ANALYSIS

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan. All elements of a plan or plan amendment must be based on relevant, appropriate data and an analysis by the local government. Each comprehensive plan must include a transportation element addressing traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government. Local governments may extend this concurrency requirement to additional public facilities such as transportation. Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees to fund the infrastructure needed to expand local services to meet the demands of population growth caused by new growth. Local governments may increase impact fees only under limited circumstances, including upon a showing of extraordinary circumstances.

In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.

The bill revises provisions concerning impact fees and concurrency and provides additional guidance concerning mobility fees. The bill provides definitions for “mobility fee” and “mobility plan” to be used within the Community Planning Act. The bill provides that local governments adopting and collecting impact fees by ordinance or resolution must use localized data available within the previous 12 months of adoption for the local government’s calculation of impact fees.

The bill does not have a fiscal impact on state or local government.

The bill takes effect on July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Every local government, defined as any county and municipality,[1] is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[2] All elements of a plan or plan amendment must be based on relevant, appropriate data[3] and an analysis by the local government that may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.[4] The data supporting a plan or amendment must be taken from professionally accepted sources[5] and must be based on permanent and seasonal population estimates and projections.[6]

Each comprehensive plan must include a transportation element, the purpose of which is to plan for a multimodal transportation system emphasizing feasible public transportation, addressing mobility issues pertinent to the size and character of the local government, and designed to support all other elements of the comprehensive plan.[7] The transportation element must address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.[8] The plan of a local government with a population exceeding 50,000 that is not within the planning area of a metropolitan planning organization (MPO)[9] also must address mass transit, ports, and aviation[10] and related facilities.[11] The transportation planning element for a local government with a population exceeding 50,000 located within the area of a MPO specifically must address the following:

- All alternative modes of travel, including public transportation, pedestrian, and bicycle;
- Aviation, rail, and seaport facilities, access to those facilities, and intermodal transportation;
- Capability to evacuate coastal population prior to a natural disaster; and
- Identification of land use densities, building intensities, and transportation management programs to promote public transportation.[12]

The transportation planning element for a municipality with a population exceeding 50,000, or a county with a population exceeding 75,000, must provide for moving people by mass transit, including:

- Providing efficient, safe, and convenient public transit, including accommodation for the transportation disadvantaged;
- Plans for port, aviation, and related facilities; and
- Plans for circulation of recreational traffic, including bicycle and riding facilities and exercise trails.[13]

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[1] S. 163.3164(29), F.S. For the purpose of the act, the Central Florida Tourism Oversight District may exercise the powers of a municipality for the area under its jurisdiction. S. 163.3167(6), F.S. *See also* ch. 2023-5, Laws of Fla. (renaming the Reedy Creek Improvement District to the Central Florida Tourism Oversight District).
[2] Ss. 163.3167(2), 163.3177(2), F.S.
[3] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[4] S. 163.3177(1)(f), F.S.
[5] S. 163.3177(1)(f)2., F.S. The statute does not further define "professionally accepted sources."
[6] S. 163.3177(1)(f)3., F.S. Population estimates may be those published by the Office of Economic and Demographic Research or may be generated by the local government based upon a professionally acceptable methodology. *Id.*
[7] S. 163.3177(6)(b), F.S.
[8] S. 163.3177(6)(b)1., F.S.
[9] S. An MPO must be designated as provided in 23 U.S.C. s. 450.310(a) for each urbanized area with a population of more than 50,000. S. 339.175(2), F.S. Florida MPOs are intended specifically to develop plans and programs in metropolitan areas for the development and management of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities to function as an intermodal transportation system. S. 339.175(1), F.S.
[10] All local governments have the option to include within the transportation element an airport master plan, incorporated into the plan through the comprehensive plan amendment process. S. 163.3177(6)(b)4., F.S.
[11] S. 163.3177(6)(b), F.S.
[12] S. 163.3177(6)(b)2., F.S.
[13] S. 163.3177(6)(b)3., F.S.

In addition to the general requirements for data supporting a comprehensive plan or amendment, the transportation planning element must include one or more maps showing the general location of existing and proposed transportation system features and data, analyses, and associated principles pertaining to:

- Existing transportation system levels of service and system needs and availability of transportation facilities and services;
- Growth trends and travel patterns, as well as interactions between land use and transportation;
- Current and projected intermodal[14] deficiencies and needs;
- Projected transportation system levels of service and system needs; and
- How the local government will correct existing facility deficiencies, meet the needs of the projected transportation system, and advance the transportation purposes of the plan.[15]

Generally, local government transportation and mobility planning should address providing mobility options, such as automobile, bicycle, pedestrian, or mass transit, that minimize environmental impacts, expand transportation options, and increase connectivity between destinations.[16]

Transportation Concurrency

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government.[17] Local governments may extend this concurrency requirement to additional public facilities such as transportation.[18] Where concurrency is applied to transportation, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.[19] The plan must show that the included levels of service may reasonably be met.[20] Local governments utilizing transportation concurrency must use professionally accepted studies to evaluate levels of service and techniques to measure such levels of service when evaluating potential impacts of proposed developments.[21] While local governments implementing a transportation concurrency system are encouraged to develop and use certain tools and guidelines, such as addressing potential negative impacts on urban infill and redevelopment[22] and adopting long-term multimodal strategies,[23] such local governments must follow specific concurrency requirements including consulting with the Florida Department of Transportation if proposed amendments to the plan affect the Strategic Intermodal System, exempting public transit facilities from concurrency requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.[24]

An applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit satisfies the requirements for transportation concurrency if the applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of transportation improvements required to mitigate the impact of the proposed

[14] "Intermodal transportation" is not defined in the statute but generally means the transportation by or involving more than one form of carrier in a single journey, particularly for moving cargo. *See* "intermodal," available at https://www.merriam-webster.com/dictionary/intermodal (last visited April 11, 2023); "intermodal transport," available at https://www.ups.com/us/en/supplychain/insights/knowledge/glossary-term/intermodal-transport.page (last visited April 11, 2023). Part of the intent in creating the Florida Strategic Intermodal System is to address the increased demands placed on the entire statewide transportation system by economic and population growth and projected increases in freight movement, international trade, and tourism designing and operating a strategic intermodal system to meet the mobility needs of the state. *See* s. 339.61(2), F.S.
[15] S. 163.3177(6)(b)1., F.S.
[16] Dept. of Economic Opportunity, "Transportation Planning," available at https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited April 11, 2023), herein DEO Transportation Planning.
[17] S. 163.1380(2), F.S. The only such services for which concurrency is mandatory are sanitary sewer, solid waste, drainage, and potable water supplies.
[18] S. 163.3180(1), F.S.
[19] Ss. 163.3180(1)(a), 163.3180(5)(a), F.S. *See* DEO Transportation Planning, *supra* n. 16.
[20] S. 163.3180(1)(b), F.S.
[21] S. 163.3180(5)(b)-(c), F.S.
[22] S. 163.3180(5)(e), F.S.
[23] S. 163.3180(f), F.S.
[24] S. 163.3180(5)(h), F.S. *See* DEO Transportation Planning, *supra* n. 16.

development and the proffered proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements benefitting a regionally significant transportation facility.[25] The plan for transportation concurrency must provide the basis on which landowners will be assessed a proportionate share,[26] which must include a compliant formula for calculating the proportionate share.[27] The proportionate share may not include additional costs to reduce or eliminate existing transportation deficiencies.[28]

Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. Such an alternative system may not be used to restrict or deny certain development approval applications provided the developer agrees to pay for the development's transportation impacts using the funding mechanism implemented by the local government. Local government mobility fee systems must comply with all requirements for adopting and implementing impact fees. An alternative funding system that is not mobility fee based may not impose on new development any responsibility for funding existing transportation deficiencies.[29]

Impact Fees

One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees on new development. Local governments impose impact fees to fund infrastructure[30] needed to expand local services to meet the demands of population growth caused by new growth.[31] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[32]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[33]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[34]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[35]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[36]
- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[37]

[25] S. 163.3180(5)(h)1.c., F.S.
[26] S. 163.3180(5)(h)1.d., F.S.
[27] S. 163.3180(5(h)2.a.-d., F.S.
[28] S. 163.3180(5)(h)2., F.S. For purposes of s. 163.3180(5), F.S., "transportation deficiency" means a facility or facilities on which the level of service standard adopted in the comprehensive plan is exceeded by the number of existing, projected, or vested trips together with additional trips originating from any source other than the development project under review, and trips forecast by established traffic standards. S. 163.3180(5)(h)4., F.S. Local governments may resolve existing transportation deficiencies within an identified transportation deficiency area by creating a transportation development authority with specific powers to implement a transportation sufficiency plan funded through a formula of tax increment funding. Adopting a transportation sufficiency plan is deemed as meeting transportation level of service standards, and proportionate fair-share mitigation is limited to ensure developments within the transportation deficiency area are not responsible for additional costs to eliminate deficiencies. S. 163.3182, F.S.
[29] S. 163.3180(5)(i), F.S.
[30] "Infrastructure" means the fixed capital expenditure or outlay for the construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years, together with specific other costs required to bring the public facility into service but excluding the costs of repairs or maintenance. The term also includes specific equipment. S. 163.31801(3), F.S.
[31] S. 163.31801(2), F.S. Water and sewer connection fees are not impact fees. S. 163.31801(12), F.S.
[32] S. 163.31801(4)(a), F.S.
[33] S. 163.31801(4)(b), F.S.
[34] S. 163.31801(4)(c), F.S.
[35] S. 163.31801(4)(d), F.S.
[36] S. 163.31801(4)(e), F.S.
[37] S. 163.31801(4)(f), F.S.

- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[38]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[39]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[40]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[41] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[42] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[43] Local governments providing an exception or waiver of impact fees for the development or construction of affordable housing are not required to use any revenues to offset the impact of such development.[44]

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.[45] Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[46]

Local governments may increase impact fees only under limited circumstances. A fee may be increased no more than once every four years, may not be increased retroactively, the increase may not exceed 50 percent of the current impact fee amount, and any increase must be consistent with a statutorily-compliant plan for the imposition, collection, and use of the fees. An increase not exceeding 25 percent of the current fee amount must be implemented in two equal annual increments, while an increase greater than 25 percent but not exceeding 50 percent of the current amount must be implemented in four equal annual installments. However, a local government may increase a fee more than once in four years or for more than 50 percent of a current impact fee amount if it has:

- Prepared a demonstrated-need study within 12 months before adopting the increase showing extraordinary circumstances necessitating the need for the increase;
- Conducted at least two publicly noticed workshops on the extraordinary circumstances justifying the increase; and
- Approved the increase by at least a two-thirds vote of the governing body.[47]

A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[48]

[38] S. 163.31801(4)(g), F.S.
[39] S. 163.31801(4)(h), F.S.
[40] S. 163.31801(4)(i), F.S.
[41] *See* s. 163.31801(2), F.S.
[42] S. 553.79, F.S.
[43] S. 163.3164(16), F.S.
[44] S. 163.31801(11), F.S.
[45] S. 163.31801(5), F.S.
[46] S. 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.
[47] S. 163.31801(6), F.S.
[48] S. 163.31801(7), F.S.

With each annual financial report or audit filed[49] a local government must report specific information on impact fees imposed, including the specific purpose of the fee, the impact fee schedule describing the method of calculating the fee, the amount assessed for each purpose and for each type of dwelling, the total amount of fees charged by type of dwelling, and each exception or waiver to the imposition of impact fees provided for construction of affordable housing.[50] Additionally, the chief financial officer or executive officer (if there is no chief financial officer) must submit with the annual financial report an affidavit attesting that all impact fees were collected and expended by the local government, or on its behalf, in full compliance with the spending period provisions in the local ordinance and that funds expended from each impact fee account were used to acquire, construct, or improve those specific infrastructure needs.[51]

Mobility Plans and Fees

In the Community Renewal Act[52] of 2009 (Act), the Legislature found that the concept and application of transportation concurrency was "complex, inequitable, lack(ed) uniformity among jurisdictions, (was) too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevent(ed) the attainment of important growth management goals."[53] The Act required completion and submission of a mobility fee methodology study[54] and stated the Legislature's intent that a mobility fee "should be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development."[55] In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.[56]

Alternative mobility funding systems using a mobility fee are encouraged to incorporate one or more of the statutory tools and techniques, including:

- Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, appropriate land use mixes, intensity and density;
- Adoption of an area wide level of service not dependent on any single road segment function;
- Exempting or discounting impacts of locally desired development;
- Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment with convenient interconnection to transit;
- Establishing multimodal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide adequate a level of mobility; and
- 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.[57]

Some local governments have adopted mobility plans and mobility fees.[58]

Effect of Proposed Changes

[49] *See* ss. 218.32, 218.39, F.S.
[50] S. 163.31801(13), F.S.
[51] S. 163.31801(8), F.S.
[52] Ch. 2009-96, s. 1, Laws of Fla.
[53] Ch. 2009-96, s. 13(1)(a), Laws of Fla.
[54] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at https://cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf last visited April 11, 2023).
[55] Ch. 2009-96, s. 13(1)(b), Laws of Fla.
[56] Ch. 2013-78, s. 1, Laws of Fla.
[57] S. 163.3180(5)(f), F.S.
[58] *See* Hillsborough County Code of County Ordinances, ch. 40, art. III, div. 2, *Mobility Fees*; Pasco County Code of Ordinances, Land Development Code, ch. 1300, s. 1302.2; City of Port St. Lucie Code of Ordinances, Title XV, ch. 159, s. 159.101, *Port St. Lucie Mobility Fee Ordinance*.

The bill revises provisions concerning impact fees and concurrency while providing additional guidance concerning mobility fees. The bill provides definitions for "mobility fee" and "mobility plan" to be used within the Community Planning Act.[59]

The bill requires agreements between local governments that implement a transportation concurrency system and applicants for a development-of-regional-impact development order, development agreement, rezoning, or other land use permit concerning the applicants offer to pay for or construct its proportionate share of required improvements to that after an applicant makes its contribution or constructs its proportionate share, the project shall be considered to have mitigated its transportation impacts and must be allowed to proceed. The bill provides that local governments may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share contribution.

The bill prohibits local governments from charging for transportation impacts if they are not the local government that is issuing a building permit, requires that local governments collect for extra-jurisdictional impacts if they are issuing building permits, and prohibits local governments from assessing multiple charges for the same transportation impact.

Impact Fees

The bill provides that local governments adopting and collecting impact fees must use localized data available within the previous 12 months of adoption for the local government's calculation of impact fees. The bill provides that a local government must credit against the collection of the impact any contribution identified in the development order or any form of exaction, including monetary contributions.

The bill provides that holders of transportation or road impact fee credits granted under s. 163.3180 or s. 380.06, F.S., along with other provisions, which existed before the adoption of the mobility fee-based funding system, is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date it was first establish.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3164, F.S., relating to Community Planning Act definitions.

Section 2: Amends s. 163.3180, F.S., relating to concurrency.

Section 3: Amends s. 163.31801. F.S., relating to impact fees.

Section 4: Amends s. 212.055, F.S., relating to discretionary sales surtaxes.

Section 5: Provides an effective date of July 1, 2023.

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:

[59] The Community Planning Act is part II of ch. 163, F.S.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revises the ability of local governments to increase impact fees based upon a showing of extraordinary circumstances by:

- Replacing the term with “extraordinary impacts,” defined as effects of development that will require mitigation by the affected local government, school district, or special district in the next four year that will exceed the total of the current impact fee amount, together with any increase that is permissible under the four-year phase-in provisions.
- Requires the demonstrated needs study to show that the projected population growth and in demand for the specific services funded by the impact fee will exceed the projected rates of population growth and demand for those specific services statewide.
- Revises the publicly noticed workshops requirement, necessitating the workshops must be solely dedicated to the extraordinary impacts, and requires two properly noticed public meetings also solely dedicated to the extraordinary impacts as a requirement.
- Provides that in any administrative or judicial proceeding challenging an impact fee increase by a local government due to extraordinary impacts, the local government shall have the burden of proving by clear and convincing evidence that the local government justifiably relied upon the demonstrated-need study in the process of increasing impact fees.

On April 12, 2023, the Ways & Means Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute differs from CS/HB 235 by:

- Creating s. 163.3180(5)(j), F.S., which prohibits local governments from charging for transportation impacts if they are not the local government that is issuing a building permit, requires that local governments collect for extra-jurisdictional impacts if they are issuing building permits, and prohibits local governments from assessing multiple charges for the same transportation impact.
- Removing changes made by the bill to s. 163.31801(6)(g), F.S., which revised the ability of local governments to increase impact fees based upon a showing of extraordinary circumstances.
- Amending s. 163.3180(7), F.S., requiring local governments transitioning to alternative funding system to provide holders of impact fee credits with full benefit of intensity and density of prepaid credit balances.
- Removing s. 163.31803, F.S., which was created by CS/HB 235 to establish a method for the adoption and implementation of mobility plans as an alternative to transportation concurrency.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.

Bert Harris Act Shade Meetings

Sunshine, pre-suit notice period not pending litigation

Number: AGO 2009-25

Date: June 10, 2009

Subject:
Sunshine, pre-suit notice period not pending litigation

Mr. Ernest H. Kohlmyer
Counsel to Town of Yankeetown
2707 East Jefferson Street
Orlando, Florida 32803

RE: GOVERNMENT IN THE SUNSHINE – BERT J. HARRIS ACT – ATTORNEY CLIENT – MUNICIPALITIES – SETTLEMENT NEGOTIATIONS – pre-suit notice period is not pending litigation allowing closed attorney-client meeting. ss. 70.001 and 286.011(8), Fla. Stat.

Dear Mr. Kohlmyer:

As counsel to the Town of Yankeetown, you ask the following question:

May a town council which has received a pre-suit notice letter under the Bert J. Harris Act conduct a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss settlement negotiations?

In sum:

A town council which has received a pre-suit notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss settlement negotiations.

The "Bert J. Harris, Jr., Private Property Rights Protection Act" recognizes that some laws, regulations, and ordinances of the state and political entities in the state "may inordinately burden, restrict, or limit private property rights without amounting to a taking[.]" The act, therefore, creates a separate and distinct cause of action from a takings suit to remedy such situations.[1] It sets forth the procedures for seeking relief and in part provides:

"Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days."[2]

The governmental entity is required to provide written notice of the claim to all parties to any administrative action that gave rise to the claim and to all owners of real property contiguous to the affected parcel. Within 15 days after the claim has been presented, the governmental entity must report the claim in writing to the Department of Legal Affairs and provide the department

with the name, address and telephone number of the employee who may be contacted for additional information.[3]

During the applicable 90-day or 180-day notice period, unless extended by mutual agreement, the governmental entity is required to make a written settlement offer to effectuate:

"1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.
11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d)."[4]

Thus, the act sets forth a laundry list of steps that the governmental entity may take to settle the claim for which it has been notified. If a settlement agreement has the effect of a modification, variance, or special exception to a rule, regulation, or ordinance as it would otherwise apply to the subject property, the statute requires that the relief granted must protect the public interests served by the regulations and be appropriate to avoid an inordinate regulatory burden on the property.[5] If the settlement contravenes the application of a statute that would otherwise be applied to the subject property, the agreement must be reviewed and approved by the circuit court to assure that the relief granted protects the public interest served by the statute and that it is the appropriate relief to avoid an inordinate burden upon the subject property.[6]

In addition, during the notice period, unless a settlement offer has been accepted, each governmental entity notified pursuant to the act must issue a written "ripeness decision" identifying the uses to which the property may properly be put. Should the governmental entity fail to issue a written ripeness decision during the applicable notice period, the prior actions of the governmental entity are deemed to be ripe and such failure is deemed a ripeness decision which has been rejected by the property owner. The act states that "[t]he ripeness decision, as a matter of law, constitutes the *last prerequisite to judicial review*, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies."[7] (e.s.)

It would appear that the statute distinguishes the activities occurring after pre-suit notice has been received and during the notice period from the judicial proceedings that may occur after the

issue has become ripe for judicial review.

Section 286.011(8), Florida Statutes, makes litigation strategy or settlement meetings confidential when they are held between a board and its attorney and the board is a party before a court or administrative agency. The statute allows access to the record of such meeting when the litigation is concluded. Specifically, the statute states that:

"Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:
(a) The entity's attorney shall advise the entity at a public meeting that he desires advice concerning the litigation.
(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.
(e) The transcript shall be made part of the public record upon conclusion of the litigation."

As this office recognized in Attorney General Opinion 95-06:

"Section 286.011(8), Florida Statutes, does not create a blanket exception to the open meeting requirement of the Sunshine Law for all meetings between a public board or commission and its attorney. The exemption is narrower than the attorney-client communications exception recognized for private litigants. Only discussions on pending litigation to which the public entity . . . is presently a party are subject to its terms. Such discussions are limited to settlement negotiations or strategy sessions related to litigation expenditures."[8]

It is well settled that the Sunshine Law was enacted for the benefit of the public and should be construed liberally to give effect to its public purpose, while exceptions to its terms should be defined narrowly.[9] Section 286.011(8), Florida Statutes, refers to pending litigation to which the entity is presently a party before a court or administrative agency. The term "presently" is defined as "[i]mmediately; now; at once" while "pending" is defined as:

"Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment. Thus, an action or suit is

"pending" from its inception until the rendition of final judgment."[10]

Courts have concluded that the Legislature intended that the exemption in section 286.011(8), Florida Statutes, be strictly construed, as in *School Board of Duval County v. Florida Publishing Company*[11] where the district court found that the purpose of the exemption was to permit "any governmental agency, its chief executive and attorney to meet in private *if the agency is a party to litigation* and the attorney desires advice concerning settlement negotiations or strategy." (e.s.) As noted in Attorney General Opinion 98-21, had the Legislature's intent been to extend the exemption to include impending or imminent litigation as well as pending litigation, it could have easily so provided as it has in section 119.071(1)(d)1., Florida Statutes. That section provides a limited work-product exemption for records "prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings," and for records "prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings[.]"

The situation you pose is similar to the one considered in Attorney General Opinion 2006-03 where this office was asked whether a closed attorney-client session could be held to discuss settlement negotiations on an issue that was the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others. After discussing the intent of section 286.011(8), Florida Statutes, and analyzing its terms, this office concluded that the statute did not apply to the mediation prescribed in the partnership agreement since no litigation had been filed in either the courts or before an administrative body.

More recently, in Attorney General Opinion 2009-14, this office concluded that a city could not hold a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss the terms of mediation undertaken pursuant to the conflict resolution procedures set forth in Chapter 164, Florida Statutes. The exemption contained in section 286.011(8), Florida Statutes, does not extend to discussions between the city attorney and the city commission regarding settlement under the Florida Governmental Conflict Resolution Act.[12]

At the time pre-suit notice is given under the Bert J. Harris Act, no action has been filed in a court or before an administrative body. While there is the anticipation of a civil proceeding, I cannot conclude that one would be pending such that the provisions of section 286.011(8), Florida Statutes, would be available.

Accordingly, it is my opinion that a town council which has received a pre-suit notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss settlement negotiations.

Sincerely,

Bill McCollum
Attorney General

BM/tals

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[1] Section 70.001(1), Fla. Stat.

[2] Section 70.001(4)(a), Fla. Stat. If complete resolution of the matter requires active participation by more than one governmental entity, the property owner must present the claim to each of the governmental entities involved.

[3] Section 70.001(4)(b), Fla. Stat.

[4] Section 70.001(4)(c), Fla. Stat. Section 70.001(4)(d), Fla. Stat., sets forth a requirement that action taken by the governmental entity in settling a claim "shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property."

[5] Section 70.001(4)(d)1., Fla. Stat.

[6] Section 70.001(4)(d)2., Fla. Stat.

[7] Section 70.001(5)(a), Fla. Stat.

[8] *And see School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996), agreeing with and quoting Op. Att'y Gen. Fla. 95-06 (1995). *See also* Op. Att'y Gen. Fla. 04-35 (2004) (s. 286.011[8]'s application limited to pending litigation; it does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable).

[9] *See City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995) and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

[10] Black's Law Dictionary, pp. 1066 and 1021 (5th ed. 1979), respectively. *And see* Black's Law Dictionary *Present* ("Now existing . . . Being considered"), p. 1221; and *Pending* (awaiting decision; under consideration; throughout the continuance of; during), p. 1169 (8th ed. 2004).

[11] 670 So. 2d 99 (Fla. 1st DCA 1996). *And see City of Dunnellon v. Aran*, *supra*.; *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998).

[12] *See also* Inf. Op. to McQuagge, dated February 13, 2002 (absent expression of legislative intent that officials attending mediation sessions pursuant to section 164.1055, Florida Statutes, are authorized to privately discuss among themselves the matters being considered at such a meeting, such meetings must be conducted openly and in accordance with the provisions of section 286.011, Florida Statutes).

A bill to be entitled

An act relating to public meetings; amending s. 286.011, F.S.; providing that specified entities may meet in private with their attorneys to discuss certain claims concerning private property rights; specifying what may be discussed during such closed meetings; requiring that such meetings be transcribed; providing that such transcripts become public records at specified times; providing an effective date.

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

Section 1. Subsection (8) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney during the 90-day-notice period specified in s. 70.001(4) to discuss claims submitted in accordance with that paragraph, and may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a

party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation or concerning a claim submitted in accordance with s. 70.001(4).

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures or relating to a claim submitted in accordance with s. 70.001(4).

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the

meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation, upon settlement of a claim under s. 70.001, or upon the expiration of the statute of limitation for the claim arising under chapter 70 in the event no litigation is filed and there is no settlement of a claim under s. 70.001.

Section 2. This act shall take effect July 1, 2023.

Public Meetings (Supported)

HB 397 (Tuck) would have allowed local governments to meet in private with legal counsel, during the90-day notice period, to discuss claims concerning the Bert Harris Act and private property rights.Transcripts of these private meetings would have been made a part of the public record upon settlementof a claim or when the statute of limitation has expired if there is no litigation or settlement. (Cruz)

Unsafe Structures / Historic Preservation

Local Regulation of Nonconforming or Unsafe Structures (Opposed)

CS/CS/HB 1317 (Roach) and **CS/CS/CS/SB 1346** (Avila) would have allowed private property owners incoastal communities to obtain a building permit to demolish any nonconforming structure as defined inthe bill, including those which have been locally designated as historic in nature. The bills would haveautomatically authorized the building of a replacement structure. (Cruz)

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1317 Local Regulation of Nonconforming or Unsafe Structures
SPONSOR(S): Commerce Committee, Regulatory Reform & Economic Development Subcommittee, Roach
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Roy	Darden
3) Commerce Committee	18 Y, 1 N, As CS	Wright	Hamon

SUMMARY ANALYSIS

The Florida Building Codes Act requires a person, firm, or corporation that wishes to demolish any building to first obtain a building permit from the local government. Some local governments in Florida have placed additional requirements or restrictions on obtaining permits for the demolition of buildings deemed historic.

The bill creates the "Resiliency and Safe Structures Act," which provides that:

- The bill does not apply to any structure that is a single-family home or individually listed on the National Register of Historic Places.
- For any reason other than public safety, a local government may not prohibit, restrict, or prevent the demolition of any:
  - Nonconforming structure, which is a structure that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program, located within one-half mile of the coastline in zones V, VE, AO, or AE in the Flood Insurance Rate Map issued by the Federal Emergency Management Agency;
  - Structure determined to be unsafe by a local building official; or
  - Structure ordered to be demolished by a local government.
- A local government may only administratively review an application for a demolition permit for such a structure for compliance with the Building Code, the Fire Prevention Code, and any regulation applicable to a similarly situated parcel, and may not impose additional local land development regulations or public hearings on an applicant for such a demolition permit.
- A local government must authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations.
- A local government may not do any of the following:
  - Limit the development potential of replacement structures below the maximum development potential allowed by local development regulations.
  - Require replication or preservation of elements of a demolished structure.
  - Impose additional regulatory or building requirements on replacement structures or additional public hearings or administrative processes not otherwise applicable to a similarly situated vacant parcel.
- Development applications submitted for replacement structures must be processed in accordance with the process outlined in local land development regulations including any required public hearings in front of the local historic board. However, a local government may not impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.
- A local government may not adopt or enforce a law that in any way limits the demolition of an applicable structure or that limits the development of a replacement structure in violation of the bill.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state. *See* Fiscal Comments

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[1] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[2]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (FBCA). The Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[3]

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.[4]

Building code administrators are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR.[5] A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[6]

Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[7]

The FBCA provides that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her **single-family residential structure** provided that:[8]

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 14, 2023).
[2] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Mar. 14, 2023).
[3] *See* s. 553.72(1), F.S.
[4] S. 553.71(5), F.S.
[5] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[6] S. 468.603(2), F.S.
[7] S. 553.79(1), F.S.
[8] S. 553.79(25)(a), F.S.

Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program;
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

However, a local law, ordinance, or regulation may restrict demolition permits for a:[9]
- Structure designated on the National Register of Historic Places;[10]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Permits for Property with a Historic Designation

Some local governments in Florida have adopted land development regulations that designate certain older buildings to be historic. These local governments have placed restrictions on property owners from obtaining permits for the demolition of older buildings that the local government has deemed historic. Below are examples of such regulations:
- Requiring a special demolition permit process,[11] and
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[12]
  - The colors, pattern, and trim used in the building's façade.
  - The design of the roof.
  - The proportions and relationships between doors and windows.

Proponents of these land development regulations argue that these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[13] Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code's minimum flood elevation requirements, which can make them dangerous and can be demolished for new structures or buildings that meet the requirements of the current Building Code.[14]

There appear to be conflicts[15] in some areas related to whether older buildings that may be unsafe should be demolished or be given time to be rehabilitated. Some argue that policies related to demolition are having an effect on affordable housing.[16]

Unsafe Structures

[9] S. 553.79(25)(d), F.S.
[10] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Mar. 13, 2023); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Mar. 13, 2023).
[11] Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.
[12] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[13] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Mar. 14, 2023).
[14] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Mar. 14, 2023); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Mar. 14, 2023).
[15] In November 2022, news reports indicated that there were "dozens of ongoing lawsuits that have recently been filed between property owners and the City of Miami over attempts to demolish their properties. WLRN Miami | South Florida, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs*, December 5, 2022, After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs | WLRN (last visited Mar. 16, 2023).
[16] In 2022, approximately "48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city." *Id*.

Under the Florida Building Code, Existing Building, 7th Edition, buildings, structures or equipment shall be deemed unsafe if they are:[17]

- unsanitary,
- deficient due to inadequate means of egress facilities, inadequate light and ventilation,
- a fire hazard,
- structures or individual structural members that are dangerous,
- otherwise dangerous to human life or the public welfare,
- involved in illegal or improper occupancy or inadequate maintenance, or
- vacant and not secured against entry.

Various local governments across the state impose additional regulations regarding what deems a structure unsafe.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.[18] The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.[19] The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.[20] Within participating communities, the federal government makes flood insurance available throughout the community.[21] To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.[22]

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.[23] While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.[24] An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).[25] The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year[26] (and at least a 26 percent chance of flooding over the course of a 30-year mortgage).[27] In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.[28]

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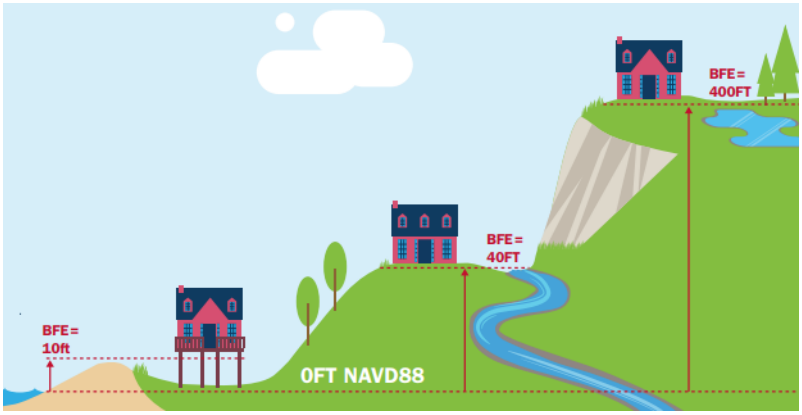
[17] S. 201, 2020 Florida Building Code, Existing Building, 7th Ed.
[18] FEMA, *50 Years of the NFIP*, *available at* https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf.
[19] Benefits.gov, National Flood Insurance Program (NFIP), available at https://www.benefits.gov/benefit/435 (last visited March 29, 2023)
[20] FEMA, *Participation in the NFIP*, https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B (last visited Mar. 29, 2023).
[21] *Id.*
[22] *Id.*
[23] *See* Congressional Research Service, *Introduction to the National Flood Insurance Program* , 3 (2023), https://crsreports.congress.gov/product/pdf/R/R44593.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.
[28] Congressional Research Service, *Introduction to the National Flood Insurance Program* at 10. Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally

Base Flood Elevation

A base flood is a flood that has a one percent chance of occurring during any given year.[29] The base flood elevation (BFE) is how high floodwater is likely to rise during a one-percent-annual-chance flood event (base flood).[30] BFEs are measured from a reference point called North American Vertical Datum of 1988 (NAVD88)[31], which is approximately equal to sea level, and vary widely across geographies.[32] The BFE represents the minimum elevation of construction allowed by the NFIP.[33] The relationship between the BFE and a structure's elevation determines the flood insurance premium.[34]



Base Flood Elevation[35]

Zones

Within the FIRMS or Flood Hazard Boundary Maps are designated zones, which are geographical areas that reflect the severity or type of flooding in the area.[36] Designated zones include:[37]

- V: Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26% chance of flooding over the life of a 30-year mortgage. No base flood elevations are shown within these zones.
- VE: Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26% chance of flooding over the life of a 30-year

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regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency. *Id.*

[29] FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

[30] *Id.*

[31] "A 'geodetic reference system' is used to precisely describe the location of a specific point on the Earth and is composed of latitude, longitude, and elevation. Its basis is composed of a geoid and a reference ellipsoid — two mathematical representations of the Earth's surface — along with base points to which the latitude, longitude and elevation of all other points in the system are referenced. These base points are known as 'datums'. The latitude-longitude base point is known as a horizontal datum, and the elevation base point is known as a vertical datum. Vertical datums are used to establish the elevation of monitoring locations, reference points and natural features such as lake levels and floodplains, as well as for bridges and levies.

The currently accepted vertical datum is the **North American Vertical Datum of 1988 (NAVD88)**, which was formally adopted in 1992. It consists of a leveling network that applies to the entire North American continent and which is affixed to a single origin point in Quebec, Canada." Coastal & Heartland National Estuary Partnership, University of South Florida Water Institute, *NAVD88 Datum*, Coastal & Heartland National Estuary Partnership Water Atlas, https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_navd88 (last visited March 29, 2023).

[32] FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, *available at* https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

[33] *See* FEMA, *Residential Buildings with Basements*, https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29 (last visited Mar. 29, 2023).

[34] Pinellas County, *Construction in a Floodplain*, Sept. 13, 2022, https://pinellas.gov/construction-in-a-floodplain/ (last visited March 29, 2023).

[35] FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

[36] FEMA, *Glossary,* https://www.fema.gov/about/glossary (last visited Apr. 19, 2023).

[37] *Id.*

mortgage. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.
- AO: River or stream flood hazard areas, and areas with a 1% or greater chance of shallow flooding each year, usually in the form of sheet flow, with an average depth ranging from 1 to 3 feet. These areas have a 26% chance of flooding over the life of a 30-year mortgage. Average flood depths derived from detailed analyses are shown within these zones.
- AE: The base floodplain where base flood elevations are provided. AE Zones are now used on new format FIRMs instead of A1-A30 Zones.

Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA. The coastal SFHA has three flood hazard zones: Zones V and VE (which are unique to coastal areas), AE, and AO. Zones V and VE, also known as a Coastal High Hazard Area, is where wave action and fast-moving water can cause extensive damage during a base flood event.[38]

New Construction Requirements in Coastal Flood Hazard Zones

When a community is participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas. Generally, new construction in flood-prone areas must be:[39]
- Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- Constructed with materials resistant to flood damage;
- Constructed by methods and practices that minimize flood damages; and
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:[40]
- Be located landward of the reach of mean high tide;
- Be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;
- Be elevated on pilings and columns so that the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
- Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
    - Such space may be used only for parking of vehicles, building access, or storage.

When an NFIP-participating structure, in an SFHA, has "substantial damage"[41] for which the total cost of repairs is 50 percent or more of the structure's market value before a disaster occurred, regardless of the cause of damage, the structure must undergo a "substantial improvement" and be brought into compliance with current local floodplain-management regulations and the Building Code. The decision and specific metrics used to determine if a structure is substantially damaged is made by the local government.[42]

For example, the City of Naples determined that a substantial improvement means any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure taking place during a one-year period from the date of permit issuance, the cumulative cost of which equals or

[38] *Id*.
[39] 44 C.F.R. § 60.3(a)(3)
[40] 44 C.F.R. § 60.3(e)(3)-(5)
[41] 44 C.F.R. § 59.1
[42] FEMA, *FACT SHEET: "Substantial Damage" – What Does it Mean?*, December 2, 2019, https://www.fema.gov/press-release/20210318/fact-sheet-substantial-damage-what-does-it-mean (last visited Mar. 16, 2023).

exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. Substantial improvement does not include:[43]

- Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Effect of the Bill

The bill creates the "Resiliency and Safe Structures Act" (act) and provides the following definitions:

- "Coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters as defined in the Submerged Lands Act, 43 U.S.C. s. 1301.
- "Law" means any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act.
- "Local government" means a municipality, county, special district, or any other political subdivision of the state.
- "Nonconforming structure" means a structure that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program.
- "Replacement structure" means a new structure built on a property where a structure was demolished or will be demolished in accordance with the bill.

Unless the structure is a single-family home or individually listed on National Register of Historic Places, the bill provides that the act applies to the following structures (applicable structures):

- Nonconforming structures located within one-half mile of the coastline which are also located in zones V, VE, AO, or AE, as identified in the FEMA Flood Insurance Rate Map.
- Any structure determined to be unsafe by a local building official.
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government may not prohibit, restrict, or prevent the demolition of any applicable structure for any reason, other than public safety. A local government may only administratively review an application for a demolition permit sought under the bill for compliance with the Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulation applicable to a similarly situated parcel. The local government may not impose additional local land development regulations or public hearings on an applicant for such a demolition permit.

The bill requires a local government to authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations.

The bill provides that a local government may not do any of the following:

- Limit, for any reason, the development potential of replacement structures below the maximum development potential allowed by local development regulations.
- Require replication of a demolished structure.
- Require the preservation of any elements of a demolished structure.
- Impose additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated vacant parcel.
- Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.

The bill requires that development applications submitted for replacement structures must be processed in accordance with the process outlined in local land development regulations including any required public hearings in front of the local historic board. However, a local government may not

[43] Sec. 16-112., City of Naples Ordinances.

impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.

The bill provides that the act applies prospectively and retroactively to any law adopted contrary to the bill and its intent.

The bill provides that it does not affect demolition provisions for single family homes in the Building Code.

The bill provides that a local government may not adopt or enforce a law that in any way limits the demolition of an applicable structure or that limits the development of a replacement structure in violation of the bill. A local government may not penalize an owner or a developer of a replacement structure for a demolition pursuant to this section or otherwise enact laws that defeat the intent of this section. Any local government law contrary to this section is void.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 553.8991, F.S.; relating to demolition of nonconforming structures.
Section 2: Providing an effective date.

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:

   There may be an increase in demolition permits, which may create an increase in permit revenue.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more structures to be demolished and new structures to be built in their places, which would increase development.

D. FISCAL COMMENTS:

Local governments may have to expend funds to process a possible increase in demolition permits. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provided that the bill does not apply to single-family homes or structures individually listed on the National Register of Historic Places.
- Removed the provision relating to demolition permits for single family homes.

On April 17, 2023, the Commerce Committee adopted an amendment and an amendment to the amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defined "nonconforming structure" as a structure that does not conform to the Base Flood Elevation requirements for new construction issued by the National Flood Insurance Program.
- Provided that the bill is applicable to the following qualifying structures:
  - Nonconforming structures located within one-half mile of the coastline in certain FEMA coastal flood zones.
  - Any structure determined to be unsafe by a local building official.
  - Any structure ordered to be demolished by the local government.
- Prohibited a local government from prohibiting, restricting, or preventing the demolition of any qualifying structure for any reason other than public safety. Local governments may review an application for a demolition permit for compliance with the Building Code, Fire Prevention Code, and any regulation applicable to similarly situated parcels.
- Required a local government to allow replacement structures to be developed to the maximum height and overall building size authorized by local development regulation.
- Prohibited a local government from:
  - Limiting the development potential of replacement structures below the maximum allowed by local development regulations.
  - Requiring replication of a demolished structure.
  - Requiring the preservation of any of the elements of a demolished structure.
  - Imposing additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated parcel.
  - Imposing additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.
- Provided that development applications submitted for replacement structures must be processed in accordance with the process outlined in local land development regulations, including any required public hearings in front of the local historic board, with no additional hearings that would not applicable to similarly situated parcels.
- Removed "whereas" clauses from the bill title to remove conflicting provisions.

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

SB 250 Preemption on Land Development Regulations

Natural Emergencies (Monitor)

CS/CS/SB 250 (Martin) makes various changes to existing Florida law regarding the preparation andresponse activities of state and local government to natural emergencies. Specifically, the bill providesthat following a declared natural emergency as defined in section 252.34(8), a county or municipalitymay not prohibit the placement of a temporary shelter (including but not limited to a recreationalvehicle, a trailer or similar structure on a residential property) for up to 36 months or until a certificateof occupancy is issued on the permanent residential structure, on the property, whichever occurs first, ifcertain conditions are met including:

- The resident makes a good faith effort to rebuild or renovate the damaged property, such as applying for a building permit, submitting a plan or design to the county or municipality, or

  applying for a construction loan;
- The temporary shelter is connected to water and electric utilities and does not present a danger

  to health or human safety; and
- The resident lives in the temporary shelter.

The bill requires the Division of Emergency Management (DEM) to post on its website a model debrisremoval contract for the benefit of local governments (this provision is effective upon becoming law). Inaddition, the bill requires DEM to prioritize technical assistance and training to fiscally constrainedcounties on aspects of preparedness, response, recovery, and mitigation (also effective upon becominglaw). The bill encourages local governments to create emergency financial plans in preparation for majornatural disasters. The bill also authorizes local governments to create specialized building inspectionteams following a natural disaster and encourages interlocal agreements for additional buildinginspection services during a state of emergency. Local governments are required to expedite theissuance of building permits following a natural disaster. The bill increases the extension of certainbuilding permits following a declaration of a state of emergency from six to 24 months and caps suchextension at 48 months in the event of multiple natural emergencies. Effective upon becoming law, thebill prohibits counties and municipalities within the disaster declaration for Hurricane Ian or HurricaneNicole from increasing building fees until October 1, 2024.

Effective upon becoming law, registered contractors can engage in contracting for the types of workcovered by their registration within areas for which a state of emergency has been declared. The billprohibits counties and municipalities within 100 miles of Hurricane Ian or Hurricane Nicole's landfallfrom adopting more restrictive or burdensome procedures to their comprehensive plans or landdevelopment regulations concerning review, approval or issuance of a site plan, development permit ordevelopment order before October 1, 2024. Furthermore, such counties and municipalities may notpropose or adopt a moratorium on construction, reconstruction or redevelopment of any propertydamaged by Hurricane Ian or Nicole. The bill also extends the date for fire control districts within 50miles of Hurricane Ian’s landfall to submit statutorily required performance reviews. The amends theConsultants’ Competitive Negotiation Act to allow for additional disaster-related construction projectsrelating to Hurricane Ian to utilize the “continuing contracts” provision through December 31, 2023. Thebill makes the Local Government Emergency Bridge Loan Program a revolving program and makes fundsavailable for local governments impacted by federally declared disasters until July 1, 2038, appropriates$50 million in nonrecurring funds from the General Revenue Fund to the program for the 2023-2024fiscal year, and authorizes $50 million of funds appropriated in special session to a previous version of

the program to be transferred and used for this program. The bill clarifies the 45-day grace periodfollowing a hurricane in which owners must bring a derelict vessel into compliance before being chargedwith a violation. The bill directs DEM to administer a revolving loan program for local governmenthazard mitigation projects and appropriates $1 million in nonrecurring funds from the General RevenueFund and $10 million in nonrecurring funds from the Federal Grants Trust Fund for such activity duringthe 2023-2024 fiscal year. Finally, the bill shields public utilities from liability for damages arising from
changes in reliability, continuity or quality of services stemming from an emergency or disaster.

Effective date: July 1, 2023, except as otherwise provided. (Branch)

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 Fiscal Policy

BILL:	CS/CS/SB 250
INTRODUCER:	Fiscal Policy Committee, Community Affairs Committee, and Senator Martin
SUBJECT:	Natural Emergencies
DATE:	March 24, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Fav/CS**
2.	Hunter	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 250 makes various changes throughout Florida Statutes regarding the preparation and response activities of state and local government when natural emergencies impact the state.

Specifically, the bill:

- Requires the Division of Emergency Management to post on its website a model debris removal contract for the benefit of local governments.
- Encourages local governments to create emergency financial plans in preparation for major natural disasters.
- Provides that counties and municipalities cannot prohibit a resident from placing a temporary residential structure on their property for up to 36 months following a natural emergency under certain circumstances.
- Authorizes local governments to create specialized building inspection teams following a natural disaster and encourages interlocal agreements for additional building inspection services during a state of emergency.
- Requires local governments to expedite the issuance of permits following a natural disaster.
- Increases the extension of certain building permits following a declaration of a state of emergency from six to 24 months and caps such extension at 48 months in the event of multiple natural emergencies.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from increasing building fees until October 1, 2024.
- Allows registered contractors to engage in contracting for the types of work covered by their registration within areas for which a state of emergency has been declared.

- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from adopting more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning review, approval, or issuance of a site plan, development permit, or development order before October 1, 2024.
- Extends the date for fire control districts to submit the statutorily-required performance reviews in the event of a natural disaster or a major hurricane.
- Amends the Consultants' Competitive Negotiation Act to allow for additional disaster-related construction projects relating to Hurricane Ian to utilize the "continuing contracts" provision through December 31, 2023.
- Makes the Local Government Emergency Bridge Loan Program a *revolving* program and makes funds available for local governments impacted by federally declared disasters until July 1, 2038. Additionally, the bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the program.
- Provides clarification regarding the 45 day grace period following a hurricane in which owners must bring a derelict vessel into compliance before being charged with a violation.
- Directs the Division of Emergency Management to administer a revolving loan program for local government hazard mitigation projects, and appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund for such activity. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.
- Requires property insurers doing business within the state to annually submit a claims handling manual to the Office of Insurance Regulation (OIR).
- Appropriates $971,331 in recurring funds and $37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund to fund eight new positions at the OIR for hurricane-related market conduct activity.

The bill takes effect on July 1, 2023, unless otherwise expressly provided.

II. Present Situation:

The present situation for each issue in the bill is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Present Situation:

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.[1] In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.[2]

[1] Section 252.311(1), F.S.
[2] Section 252.311(2), F.S.

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.[3] The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management. [4]

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency[5] has occurred or is imminent, he or she must declare a state of emergency.[6] An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,[7] major,[8] or catastrophic[9] disaster.[10] The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.[11] Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.[12]

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.[13] To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.[14]

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state

[3] Sections 252.32(1)(a) and 252.34(3), F.S.
[4] Section 252.35(1) and (2), F.S.
[5] "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See* s. 252.34(4), F.S.
[6] Section 252.36(2), F.S.
[7] "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. *See* s. 252.34(2)(c), F.S.
[8] "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. *See* s. 252.34(2)(b), F.S.
[9] "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement. *See* s. 252.34(2)(a), F.S.
[10] Section 252.36(4)(c), F.S.
[11] *Supra* note 6.
[12] Section 252.36(3), F.S.
[13] *See* s. 252.36(6), F.S.
[14] Section 252.36(1)(b), F.S.

agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, the division, or other state agencies delegated emergency powers by the Governor.

Presidential Disaster and Emergency Declarations

When there is a disaster in the United States, the Governor of an affected state must request an emergency and major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[15] All emergency and disaster declarations are made at the discretion of the President of the United States.[16] There are two types of disaster declarations, emergency declarations and major disaster declarations.[17] Both declarations allow for federal assistance to states and local governments, however they differ in scope, types, and amount of assistance available.[18] Primary federal disaster assistance administered by the Federal Emergency Management Agency (FEMA) is provided via the Individual Assistance Program and the Public Assistance Grant Program. The scope of an event will determine which categories within each program are available to affected states.

One component of the Public Assistance Grant Program is the provision of direct assistance or reimbursement to state and local governments for the costs of removing debris and wreckage from public and private property.

Effect of Proposed Changes:

Section 1 creates s. 125.023, F.S., to provide that a county must allow for a resident to place a temporary structure on residential property if the permanent residential structure was damaged and rendered uninhabitable during a natural emergency[19] for which the Governor declared a state of emergency. The temporary structure may be placed on the property for up to 36 months after the date of the declaration of emergency or until a certificate of occupancy is issued for the permanent residential structure, whichever occurs first. A temporary structure includes, but is not limited to, a recreational vehicle, trailer, or similar structure.

Residents must live in the temporary structure and be making a good faith effort to rebuild or renovate the damaged permanent residential structure including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan. The temporary shelter must be connected to water and electric utilities and cannot present a threat to health and human safety.

Section 2 creates s. 166.0335, F.S., to make identical changes to section 1, as applied to municipalities.

[15] 2 U.S.C. §§ 5121-5207
[16] FEMA, *How a Disaster Gets Declared*, available at: https://www.fema.gov/disaster/how-declared (last visited March 14, 2023.)
[17] *Id.*
[18] *Id.*
[19] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. *See* s. 252.34(8), F.S.

Section 4 amends s. 252.35(2), F.S., to require the Division of Emergency Management to post a model of a local government contract for debris removal to their website no later than June 1, 2023, and to post an updated model no later than June 1 of each subsequent year.

This section also requires the division to prioritize technical assistance and training to fiscally constrained counties[20] as defined in s. 218.67, F.S., on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

Additionally, this section directs the division to administer a revolving loan program for local government hazard mitigation projects. This provision will allow the division to receive grant funding from FEMA to administer the Safeguarding Tomorrow Revolving Loan Fund Program, described in more detail below.

This section is effective upon becoming law.

Section 6 creates s. 252.391, F.S., to encourage local governmental entities to create emergency financial plans for major natural disasters, including, among other things, a calculation of the costs for the event and the financial resources available to recover from the event. The plan should also identify alternative funding strategies in the event that the local governmental entity would be unable to financially address the natural disaster.

Present Situation:

Safeguarding Tomorrow Revolving Loan Fund Program

The Safeguarding Tomorrow through Ongoing Risk Mitigation ("STORM") Act, which became federal law on January 1, 2021, authorizes FEMA to provide capitalization grants to states and federally recognized tribes to establish revolving loan programs for hazard mitigation. The revolving loan funds will be used by local governments to fund projects to increase resiliency and mitigate the impacts of natural hazards including drought; severe storms, including hurricanes, tornadoes, windstorms, cyclones, and severe winter; storms; wildfires; earthquakes; flooding; shoreline erosion; high water levels; and storm surges.[21]

Under the Safeguarding Tomorrow Revolving Loan Fund Program, local governments can apply to the state entity for such loans with an interest rate of no more than 1 percent, which must be repaid by the local government no later than 20 years after the date the project is completed, or 30 years for projects in low-income areas.[22] The Safeguarding Tomorrow Revolving Loan Fund Program represents the first time that a revolving loan fund has been set up to fund hazard mitigation.

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[20] Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county. There are currently 29 fiscally constrained counties.

[21] Division of Emergency Management, *STORM Revolving Loan Fund - FAQ*, available at https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-faq-3-13-2023.pdf (last visited March 24, 2023)

[22] *Id*

In December 2022, FEMA released the Notice of Funding Opportunity making available $50 million for revolving loan program funding.[23] The Division of Emergency Management intends to apply to FEMA by April 29, 2023, for a capitalization grant to establish a revolving loan program for the state of Florida.[24] The division issued a public notice seeking proposals from communities to develop a project proposal list to accompany its application to FEMA.[25]

Effect of Proposed Changes:

Section 17 appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to the Division of Emergency Management to fund the Safeguarding Tomorrow Revolving Loan Program. The division may submit a budget amendment to the Legislative Budget Commission to release the funds, which is contingent upon documentation of an award or other approval by FEMA and the division's approved intended use plan for the funds.

Present Situation:

Registered Contractors

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR).[26] The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[27] The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[28]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[29]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[30]

[23] Division of Emergency Management, *STORM Revolving Loan Fund*, available at https://www.floridadisaster.org/dem/mitigation/safeguarding-tomorrow-through-ongoing-risk-mitigation-storm-revolving-loan-fund/ (last visited March 24, 2023).
[24] *Id.*
[25] Division of Emergency Management, *Public Notice RE Safeguarding Tomorrow Revolving Loan Fund*, available at storm-rlf-public-notice-3-13-2023.pdf (floridadisaster.org) (last visited March 24, 2023).
[26] *See* ss. 489.105, 489.107, and 489.113, F.S.
[27] Section 489.107(1), F.S.
[28] Section 489.107, F.S.
[29] *See* ss. 489.105(6)-(8) and (11), F.S.
[30] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.

"Registered contractors" are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[31]

Effect of Proposed Changes:

Section 11 amends s. 489.117, F.S., to allow registered contractors to engage in contracting for the types of work covered by their registration within any area for which a state of emergency has been declared for a natural emergency. This authorization will end 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the contractor for violations occurring outside the licensing jurisdiction under these circumstances.

This section is effective upon becoming a law.

Present Situation:

Building Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[32]

Every local government must enforce the Florida Building Code and issue building permits.[33] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.[34]
A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.[35] Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.[36] Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, reinspections, building permit processing, and fire inspections.[37] Local governments must post all building permit and inspection fee schedules on its website.[38]

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.[39] Construction work may not be done beyond a certain point until it passes an inspection.

[31] Section 489.117, F.S.
[32] Section 553.72, F.S.
[33] Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[34] Sections 125.56(4)(a), 553.79(1), F.S.
[35] Section 553.80 F.S.
[36] *Id.*
[37] Section 553.80 (7)(a)(1)
[38] Section 125.56 (4)(c) F.S., Section 166.222(2) F.S.
[39] Section 110 Seventh edition of the Florida Building Code (Building).

Current law provides a set of deadlines for ordinary processing of a building permit, chief among them that a local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.[40] Various laws require or encourage local governments to further expedite the permitting process in certain situations, such as for the construction of public schools, state colleges and universities[41] and affordable housing.[42]

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.[43]

Effect of Proposed Changes:

Section 7 amends s. 252.40, F.S., to encourage municipalities and counties to create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations following a natural disaster, and establish interlocal agreements with other jurisdictions to provide additional building inspection services during a state of emergency.

The bill additionally encourages local governments to develop and adopt plans to provide accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. The bill provides that public areas such as fairgrounds and parking lots may be used for tents and trailers for temporary accommodations.

Section 12 creates s. 553.7922, F.S., to require local governments to approve special processing procedures to expedite the issuance of permits following a natural emergency for which the Governor has declared a state of emergency. Permits to be expedited pursuant to this section are those which do not require technical review, including, but not limited to permits for: roof repairs; reroofing; electrical repairs; service changes; or the replacement of one window or door. Local governments are also permitted to waive application and inspection fees for permits expedited under this section.

Section 13 amends s. 553.80, F.S., to, as of January 1, 2023, prohibit local governments located in areas designated in the FEMA disaster declarations for Hurricanes Ian and Nicole[44] from raising building inspection fees until October 1, 2024.

This section expires on June 30, 2025, and is effective upon becoming law.

[40] Section 553.792(1)(a), F.S.
[41] Section 553.80(6)(b)2., F.S.
[42] *See* sections 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.
[43] S. 110.3.10, Seventh Edition of the Florida Building Code (Building).
[44] All 67 counties in Florida were designated within the FEMA disaster declaration for Hurricane Ian and 61 counties for Hurricane Nicole.

Present Situation:

Tolling of Permits during Emergencies

Under s. 252.363, F.S., when the Governor declares a state of emergency for a natural emergency, the period to exercise rights under a permit or other authorization is tolled for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period.

The emergency tolling and extension expressly applies to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.; or
- Expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S related to land subject to a development agreement in which the permittee and developer are the same or a related entity.
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.
- Expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity[45]

To receive the benefit of tolling and extension of a permit, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permit holder must provide written notice of the intent to exercise the tolling and extension. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted as a matter of law, and no further action on the part of the issuing authority is needed.[46]

The tolling and extension of permits and other authorizations does not apply to the following:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and

[45] Section 252.363(1)(a), F.S.

[46] "Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute." *See* Op. Att'y Gen. Fla. 12-13 (2012), *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48 (last visited Mar. 13, 2023).

- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.[47]

Effect of Proposed Changes:

Section 5 amends s. 252.363(1)(a), F.S., to increase the extension of certain building permits following a declaration of a state of emergency from six to 24 months. The extension is capped at 48 months in the event of multiple natural emergencies.

Present Situation:

Independent Special Fire Control District Performance Reviews

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.[48] The Independent Special Fire Control District Act[49] provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.[50]

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.[51] A district also may levy non-ad valorem assessments.[52] The district board may adopt a schedule of reasonable fees for services performed.[53] Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.[54]

In 2021,[55] the Legislature mandated a performance review schedule of certain independent special districts, which included fire control districts, to evaluate district programs, activities, and functions.[56] Beginning October 1, 2022, and every five years thereafter, every independent special fire control district must have a performance review conducted.[57] The Office of Program Policy Analysis and Government Accountability must conduct the performance review for special fire control districts that are located in a rural area of opportunity.[58] The final report of the performance review must be filed with the governing board of the district, the Auditor

[47] Section 252.363(1)(d), F.S.
[48] Section 191.003(5), F.S.
[49] Chapter 191, F.S.
[50] Section 191.002, F.S.
[51] Sections 191.009(1), F.S. *see* art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage "authorized by law approved by vote of the electors.")
[52] Section 191.009(2), F.S.
[53] Section 191.009(3), F.S.
[54] Section 191.009(4), F.S.
[55] Chapter 2021-226 Laws of Fla.
[56] Section 189.0695,F.S.
[57] Section 189.0695(2)(d), F.S.
[58] Section 189.0695 (2)(b), F.S.

General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the district's fiscal year (i.e., July 1st).[59]

Effect of Proposed Changes:

Section 3 amends s. 189.0695, F.S., to allow independent special fire control districts to submit performance reviews 15 months after the beginning of the district's fiscal year in the event of a natural disaster, or 24 months after the beginning of the fiscal year in the event of a hurricane rated category 3 or higher. This section applies retroactively to the reviews required to have been conducted by October 1, 2022, and the final report otherwise due by July 1, 2023.

Present Situation:

Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,[60] which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),[61] which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.[62]

CCNA Procurement Process

The CCNA establishes a three-phase process for procuring professional services:
- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:
- A project, when the basic construction cost is estimated by the agency to exceed $325,000; or
- A planning or study activity, when the fee for professional services exceeds $35,000.[63]

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During

[59] Section 189.0695(2)(c), F.S. The fiscal years of each independent special fire control district begins October1 of a calendar year.
[60] Public Law 92-582, 86 Stat. 1278 (1972).
[61] Chapter 73-19, Laws of Fla., codified as s. 287.055, F.S.
[62] Section 287.055, F.S.
[63] Section 287.055(3)(a)1., F.S.

this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.[64]

Continuing Contracts under the CCNA

The CCNA explicitly states it does not prohibit a continuing contract[65] between a firm and an agency.[66] A continuing contract is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.[67] The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.[68]

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed $4 million, for study activities if the fee for professional services for each study does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.[69]

Effect of Proposed Changes:

Section 8 amends s. 287.055(2)(g), F.S., to temporarily allow continuing contracts under the CCNA for construction projects related to Hurricane Ian site specific response or remediation that do not exceed $15 million per project. This provision applies to contracts executed through December 31, 2023, and is effective upon becoming a law.

Section 9 provides for the future expiration and reversion of statutory text in section 8 on July 1, 2026.

[64] Section 287.055(5), F.S.
[65] Section 287.055(2)(g), F.S.
[66] Section 287.055(4)(d), F.S.
[67] Section 287.055(2)(g), F.S.
[68] *Id.*
[69] Section 287.055(2)(g), F.S.

Present Situation:

Community Planning

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[70] Each county and municipality must maintain a comprehensive plan to guide future development.[71]

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.[72] A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.[73]

A comprehensive plan is implemented through the adoption of land development regulations[74] that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.[75] Such regulations must, among other prescriptions, regulate the subdivision of land and the use of land for the land use categories in the land use element of the comprehensive plan.[76] Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.[77]

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.[78]

[70] Section 163.3167(1), F.S.
[71] Section 163.3167(2), F.S.
[72] Section 163.3194(3), F.S
[73] Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.
[74] "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. See s. 163.3164(26), F.S.
[75] Section 163.3202, F.S.
[76] *Id.*
[77] Section 163.3213, F.S.
[78] Sections 163.3174(4)(a) and 163.3184, F.S.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[79] When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."[80] Once a local government has officially granted or denied a development permit, the official action constitutes a development order.[81] A development order vests certain rights related to the land.[82]

Effect of Proposed Changes:

Section 14 provides that a county or municipality in an area designated as a disaster declaration for Hurricane Ian or Hurricane Nicole[83] shall not adopt more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning the review, approval or issuance of a site plan, development permit, or development order, or propose any such adoption of amendment before October 1, 2024. This subsection applies retroactively to September 29, 2022. Any comprehensive plan amendment, land development regulation, development permit, or development order approved by a county or municipality under procedures adopted before the effective date of this act may be enforced.

Present Situation:

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent.[84] It is unlawful to store, leave, or abandon any derelict vessel in this state.[85]

Abandoned Vessels

"Abandoned property"[86] means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

[79] Section 163.3164(14), F.S.
[80] *Id.* at (16).
[81] *See id.* at (15).
[82] *See* s. 163.3167(3), F.S.
[83] All 67 counties in Florida were designated within the federal disaster declaration for Hurricane Ian, and 61 counties for Hurricane Nicole.
[84] Section 823.11(1)(b), F.S.
[85] Section 376.15, F.S.; s. 823.11(2), F.S.
[86] Section 705.101(3), F.S.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.[87]

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.[88] A person may not be charged with a violation by law enforcement within 45 days after a hurricane has passed over the state.[89]

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.[90] Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.[91]

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.[92]

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.[93] Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.[94]

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.[95] The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.[96]

[87] Section 705.103(2), F.S.
[88] *Id*.
[89] Section 823.11 (2)(b)2.b, F.S.
[90] Section 705.103(4), F.S.
[91] *Id*.
[92] Section 327.60(5), F.S.
[93] Section 327.70, F.S.
[94] Section 376.15, F.S.; s. 823.11, F.S.
[95] Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.
[96] Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.[97] A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[98]

The FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.[99] However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.[100] Pursuant to this, the FWC established the Derelict Vessel Removal Grant Program in 2019.[101] Grants are awarded based on a set of criteria outlined in FWC rules.[102]

Effect of Proposed Changes:

Section 16 amends s. 823.11(2), F.S., to provide clarification regarding the 45 day grace period following a hurricane owners have to bring a derelict vessel into compliance before they will be charged with a violation and the vessel will be removed.

Present Situation:

Local Government Emergency Response Bridge Loan

Early in 2023, the Legislature created s. 288.066, F.S., to establish the Local Government Emergency Response Bridge Loan within the Department of Economic Opportunity (DEO)[103] to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.[104]

The loans may be issued during the 2022-2023 fiscal year or the 2023-2024 fiscal year, subject to appropriation.[105] The loans are interest-free with the loan amount determined based upon

[97] Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.
[98] Section 705.103(4), F.S.
[99] Section 376.15, F.S.
[100] Section 376.15, F.S.
[101] FWC, *FWC Derelict Vessel Removal Grant Program Guidelines*, 2 (2019), *available at* https://myfwc.com/media/22317/dv-grant-guidelines.pdf (last visited March 11, 2023). Incorporated by reference in Fla. Admin. Code R. 68-1.003.
[102] *Id.*
[103] Section 288.066 F.S.
[104] Section 288.066 (1), F.S.
[105] Section 288.066 (6)(a), F.S.

demonstrated need.[106] The loans must be paid back within one year, unless extended by up to six months by the DEO based on the local government's financial condition.[107]

To be eligible a local government must be a county or municipality located in an area designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole.[108] Also, the local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the hurricane and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations.[109]

A local government may only use loan funds to continue local governmental operations or to expand and modify such operations to meet disaster-related needs.[110] The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure. The DEO must coordinate with the Division of Emergency Management to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.[111]

This program expires June 30, 2027. As loans are repaid, the DEO will remit the payments back to the General Revenue Fund and upon expiration, the DEO must return all unencumbered funds and loan payments back to the General Revenue Fund.[112]

Effect of Proposed Changes:

Section 10 amends s. 288.066, F.S., requiring the Local Government Emergency Bridge Loan Program to become a revolving program and make funds available for local governments impacted by federally declared disasters until July 1, 2038. The program is renamed the Local Government Emergency Revolving Bridge Loan Program.

Upon the issuance of a federal disaster declaration, the DEO shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. The eligible local government must submit a loan application within 12 months from the date that a federal disaster was declared. The section further creates an application process and sets forth the conditions that must be met by a local government in order to receive funds under the program. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs. Lastly, this section sets forth the obligations of the DEO to administer the program and manage repayments.

Section 19 appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the bridge loan program. This section also

[106] Section 288.066 (3), F.S.
[107] Section 288.066 (3)(c), F.S.
[108] Section 288.066 (2), F.S.
[109] *Id.*
[110] *Id.*
[111] Section 288.066 (6)(b), F.S.
[112] Section 288.066(8), F.S.

directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program provided in the bill.

Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[113] As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[114] The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[115] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[116] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[117]

Each insurer must file with the OIR their basic insurance policy or annuity contract forms and any application form that is to be made a part of the policy or contract.[118] These forms may not be delivered or issued for delivery unless the form has been filed with the office.[119] All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the OIR containing various financial data, including audited financial statements, actuarial opinions, and certain claims data.[120]

Market Conduct Examinations

The OIR is authorized to perform a market conduct examination of, among other entities, any authorized insurer.[121] The purpose of the examination is to determine the entity's compliance with Florida law.[122] The costs of the examination are to be paid by the subject entity.[123]

[113] Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.
[114] Section 624.418, F.S.
[115] Section 624.316(1)(a), F.S.
[116] Section 624.318(2), F.S.
[117] Section 624.3161, F.S.
[118] Section 627.410, F.S.
[119] *Id.*
[120] Section 624.424, F.S.
[121] Section 624.3161(1), F.S.
[122] *Id.*
[123] Section 624.3161(4), F.S.

If the examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," the OIR may order the insurer to file its claims-handling practices and procedures with the OIR for review and inspection.[124] The practices and procedures are to be held by the OIR for 36 months and are considered public records, not trade secrets, during the 36-month period.[125] The term, "claims-handling practices and procedures," is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."[126]

Effect of Proposed Changes:

Section 15 creates s. 627.4108, F.S., to provide that in the interest of ensuring that property insurers are able to properly handle insurance claims during natural disasters, catastrophes, and other emergencies, each authorized property insurer and eligible surplus lines property insurer conducting business in this state must submit any and all claims handling manuals to the OIR:

- On or before August 1, 2023;
- Annually thereafter, on or before May 1 of each calendar year; and
- Within 30 days of any updates or amendments to such manual.

The insurer must include with each such submission an attestation on a form prescribed by the OIR stating that the insurer's claims handling manual complies with the requirements of Florida Insurance Code and comports to usual and customary industry claims handling practices, and that the insurer maintains adequate resources available to implement the requirements of its claims handling manual at all times, including during extreme catastrophic events.

The OIR may, as often as it deems necessary, conduct market conduct examinations under s. 624.3161, F.S., of insurers to ensure compliance with claims such claims manual provisions.

Section 18 appropriates $971,331 in recurring funds and $37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund and provides 8 new positions to the Office of Insurance Regulation for hurricane related market conduct activity.

Effective Date

Section 20 provides that the bill will take effect on July 1, 2023, unless otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[124] Section 624.3161(6), F.S.
[125] *Id.*
[126] *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services under the CCNA, by allowing those entities to enter into larger contracts for specified disaster relief projects under a continuing contract.

Registered contractors who are able to work outside of their jurisdiction during a state of emergency may see increased positive fiscal impact due to increased business.

There may be a negative fiscal impact on property insurers in the state to comply with claims manual submittal and market conduct review activities, but is likely insignificant.

C. Government Sector Impact:

The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory. Provisions that limit a local government's ability to raise building fees for a defined period of time or that require local governments to expedite building permits during emergencies may have a negative, but likely insignificant, fiscal impact.

By allowing state and local governments to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

The bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the Local Government Emergency Revolving Bridge Loan Program.

The bill appropriates $971,331 in recurring funds and $37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund to the OIR to fund eight new positions for hurricane-related market conduct activity.

The bill appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to the Division of Emergency Management to fund the Safeguarding Tomorrow Revolving Loan Program. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 189.0695, 252.35, 252.363, 252.391, 252.40, 287.055, 288.066, 489.117, 553.7922, 553.80, and 823.11.

The bill creates the following sections of the Florida Statutes: 125.023, 166.0335, and 627.4108,

The bill creates undesignated sections of Florida law.

IX. Additional Information:

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

CS/CS by Fiscal Policy on March 23, 2023:
The committee substitute:

- Clarifies the cap increase for continuing contracts to be Hurricane Ian specific.
- Directs the Division of Emergency Management to administer a revolving loan program for local government hazard mitigation projects and provides an appropriation.
- Requires property insurers doing business within the state to submit a claims handling manual to the OIR annually.
- Makes an appropriation to the OIR to fund eight positions for hurricane-related market conduct activity.

CS by Community Affairs on March 15, 2023:
The committee substitute makes clarifying changes as it relates to temporary residential structures, tolling and extension of permits, expedited approval of certain permits, registered contractors, and the prohibition on adopting procedures to comprehensive plans and land development regulations.

B. Amendments:

None.

WINTER HAVEN
The Chain of Lakes City

City Manager's Office

RE: Concerns Regarding the Impact of CS/CS/SB 250 (2023) / Chapter 2023-304, Laws of Florida

August 14, 2023

Dear Senator Burton and Representative Killebrew,

The aftermath of Hurricanes Ian and Nicole has brought commendable legislative actions aimed at aiding Florida's citizens and storm-stricken areas. The scope, however, of the Florida Legislature's 2023 citizen assistance act, CS/CS/SB 250 (enrolled and signed into law as Chapter 2023-304, Laws of Florida), has unintentionally stymied cities like Winter Haven, stripping it and similarly situated sister cities of the legal agility needed to address important emergent and long-standing issues unrelated to these natural disasters.

By all accounts, CS/CS/SB 250 was adopted by the Legislature to give Floridians a measure of comfort that buildings damaged or destroyed by the wind swaths of Hurricanes Ian or Nicole could be rebuilt and real properties in use before the storms could continue to be of financial benefit and service to their owners. The bill's sweeping 100-mile effective radius, however, adopted as part of a floor amendment in the final days of the legislative session, does not appear to be properly related to this goal. The challenges faced by coastal residents in hard-hit communities like Cape Coral, Daytona Beach, Fort Myers, and Sanibel, are simply not present in the inland city of Winter Haven, situated more than 90 miles from landfall of the storms. Nevertheless, because the Legislature chose distance as the determining factor for applicability, Winter Haven finds itself caught in the geographic snare of CS/CS/SB 250 and its ability to respond promptly to citizen concerns with ordinary and desirable regulatory tools is now seriously obstructed, if not outright eliminated.

For example the broad prohibition on the City's ability to administratively recommend amendments to plans, regulate land developments, or implement new procedures has inadvertently resulted in significant delays in the City's ability to enact ordinances integral to public safety and that address vagrant behavior. Two such ordinances brought forward in late June are now in limbo due to these constraints, impeding City staff and Commission's ability to respond effectively to significant concerns raised by citizens and the business community. We have enclosed information for you on two, specific, proposed ordinances that cannot move forward, at this time, due to CS/CS/SB 250.

The City and its staff respect the original intent of CS/CS/SB 250, but the City's ability to serve Winter Haven's citizens is hindered by the bill's unintended consequences. Winter Haven, and other municipalities alike, should maintain the ability to act in the best interest of its citizens. As Central Florida continues to experience significant growth, this legislation has inadvertently curtailed our ability to manage and plan for rapid development, an aspect that is crucial to the quality of life and economic sustainability of our region.

While the sunset date of September 30, 2024, might appear close, the effects of these restrictions carry profound implications for our community. As such, we urge you to reconsider the geographical reach of the prohibitions, differentiate between disaster-related and unrelated regulations, and ensure such comprehensive restrictions do not become the default approach for future emergencies.

Your assistance in striking a balance between the needs of disaster-stricken areas and the regular functioning of local governance is crucial. We appreciate your consideration of these concerns.

Sincerely

T. Michael Stavres
City Manager

Eric Labbe
Director of Economic Opportunity & Community Investment

CC: Senator Ben Albritton
Representative Melony Bell
Representative Jennifer Canady
Representative Josie Tomkow
Bradley Dantzler, Mayor, City of Winter Haven
Nathanial Birdsong, Mayor Pro-Tem, City of Winter Haven
Tracy Mercer, Commissioner, City of Winter Haven
Brian Yates, Commissioner, City of Winter Haven
John Murphy, City Attorney, City of Winter Haven
Katrina Hill, Director of Public Affairs & Communication, City of Winter Haven
Casey Cook, Director of Legislative Affairs, Florida League of Cities
Allison Payne, Manager, Florida League of Cities
Rebecca O'Hara, Deputy General Counsel, Florida League of Cities
Bobby Green, Executive Director, Ridge League of Cities
Mayor Dorothea Taylor Bogert, President, Ridge League of Cities

Overview of Ordinances Halted by SB 250 in the City of Winter Haven

Ordinance O-23-31: Update to Commercial - Downtown (C-1) Zoning District Uses

Delays in considering this ordinance due to CS/CS/SB 250 prevent the City from achieving a more vibrant, walkable downtown aligned with current visions, potentially affecting community growth, development, and quality of life.

Need for the Ordinance:

- The revitalization of the City's downtown core warrants an alignment of C-1 uses with the vision of a walkable downtown.

Key Changes:

- **Child Care Facility:**
  From Permitted to Special Use.
- **Assisted Living Facility:**
  From Permitted to Not Permitted.
- **Funeral Home/Mortuary:**
  From Special Use to Not Permitted.
- **Artisan Production, Small Scale:**
  From Special Use to Permitted.
- **Personal Storage Units:**
  Introduced as Accessory Special Use.
- **Package Stores:**
  From Special Use to Permitted.

Alignment with Comprehensive Plan:

- C-1 zoning properties are marked as Primary Activity Center Future Land Use in the 2025 Future Land Use Map, intended for intense mixed uses.
- The ordinance supports the long-term goals of a social, cultural, and business-rich downtown.

Public Notification & Planning Commission Review:

- All requirements met and no public objections noted.
- The Planning Commission, in its June 6, 2023 meeting, unanimously voted for the approval of this request.

Ordinance O-23-36: Update to Winter Haven Code to Address Alcoholic Beverage Establishments

Delays in considering this ordinance due to CS/CS/SB 250 hinder the City's efforts to ensure the compatibility of banquet halls with their surroundings, including residential units, and mitigate potential negative impacts.

Need for the Ordinance:

- The City has observed that businesses operating under the definition of a "banquet hall" are often creating impacts similar to large-scale drinking establishments on the surrounding community.

Background & Community Concerns:

- The City's Police Department and Code Compliance Division have identified, through citizen complaints, calls for service, and patrols, a rise in businesses operating as banquet halls but having the impact on neighborhoods of a large-scale drinking establishment.
- The proposed changes aim to ensure closer examination of each establishment's compatibility and potential impact on its location.

Key Changes:

- Banquet Halls Requiring Special Use Permit:
  - Stand-alone or within a shopping center, if more than 150-feet of certain residential zoning districts.
  - Shopping Center location within 150-feet from certain residential zoning districts.
- Non-Permitted Banquet Halls:
  - Within 150-feet of certain residential zoning district and not located in a shopping center.

Public Notification & Planning Commission Review:

- All requirements met and no public objections noted.
- The Planning Commission, in its June 6, 2023 meeting, unanimously voted for the approval of this request.

07/27/2023

Geospatial Impact Analysis of SB 250 – Prohibition on Certain Local Government Actions Within 100 Miles of 2022 Landfalling Hurricanes (Ian, Nicole)

THOMAS T. ANKERSEN, ESQ.
Emeritus Professor, University of Florida Levin College of Law & Conservation Clinic, Emeritus Director, Florida Sea Grant Legal Program & Coastal Policy Lab, Center for Coastal Solutions, University of Florida

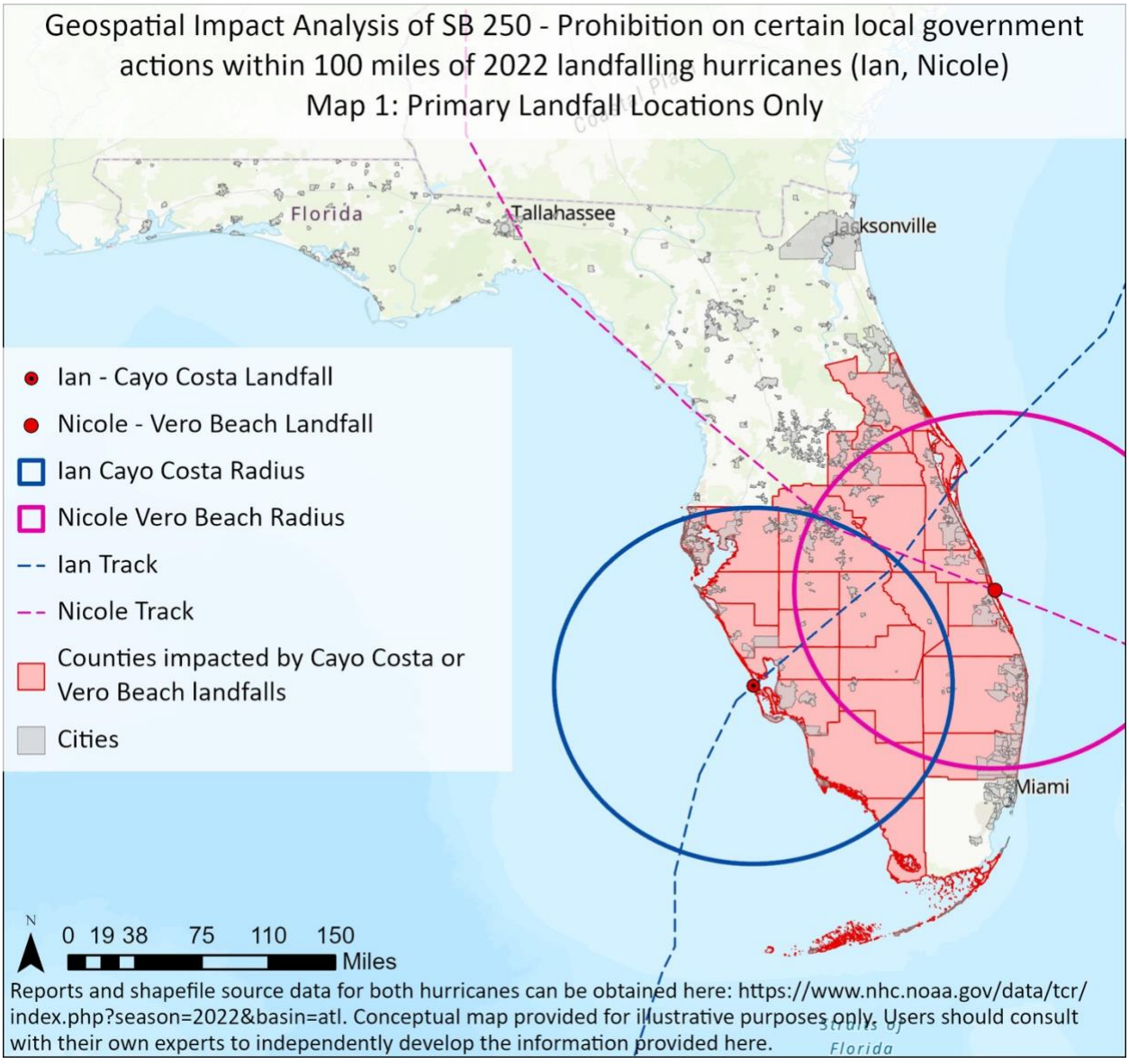
The 2023 Florida Legislature enacted SB 250 (Chapter 2023-304, Laws of Florida) in response to the 2022 hurricane season. The new law addresses aspects of emergency response, especially those relating to local government authority. Section 14 of the new law prohibits counties or municipalities "located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall" from proposing or adopting moratoriums on "construction, reconstruction, or redevelopment" of hurricane-damaged property, or proposing or adopting "more restrictive or burdensome amendments" to comprehensive plans and land development regulations, or more restrictive or burdensome review procedures for site plans, development permits or development orders. This time-limited preemption expires on October 1, 2024.

This geospatially framed preemption was introduced as an amendment midway through the legislative session (March 31st) to replace language which would have applied to all counties or municipalities in an area "designated in a Federal Emergency Management Agency disaster area declaration for Hurricane Ian or Nicole." According to the staff analysis accompanying the original bill this would have included all 67 Florida counties in the case of Hurricane Ian, and 61 counties in the case of Hurricane Nicole. No published staff analysis addresses the amendment.

Because, the amended bill adopts a geospatial approach, we used the NOAA "best-track" (see below) for each hurricane and overlaid the operative spatially explicit language – "located within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall," on maps of the State that include both county and municipal boundaries. The National Hurricane Center (NHC) provides some helpful definitions.

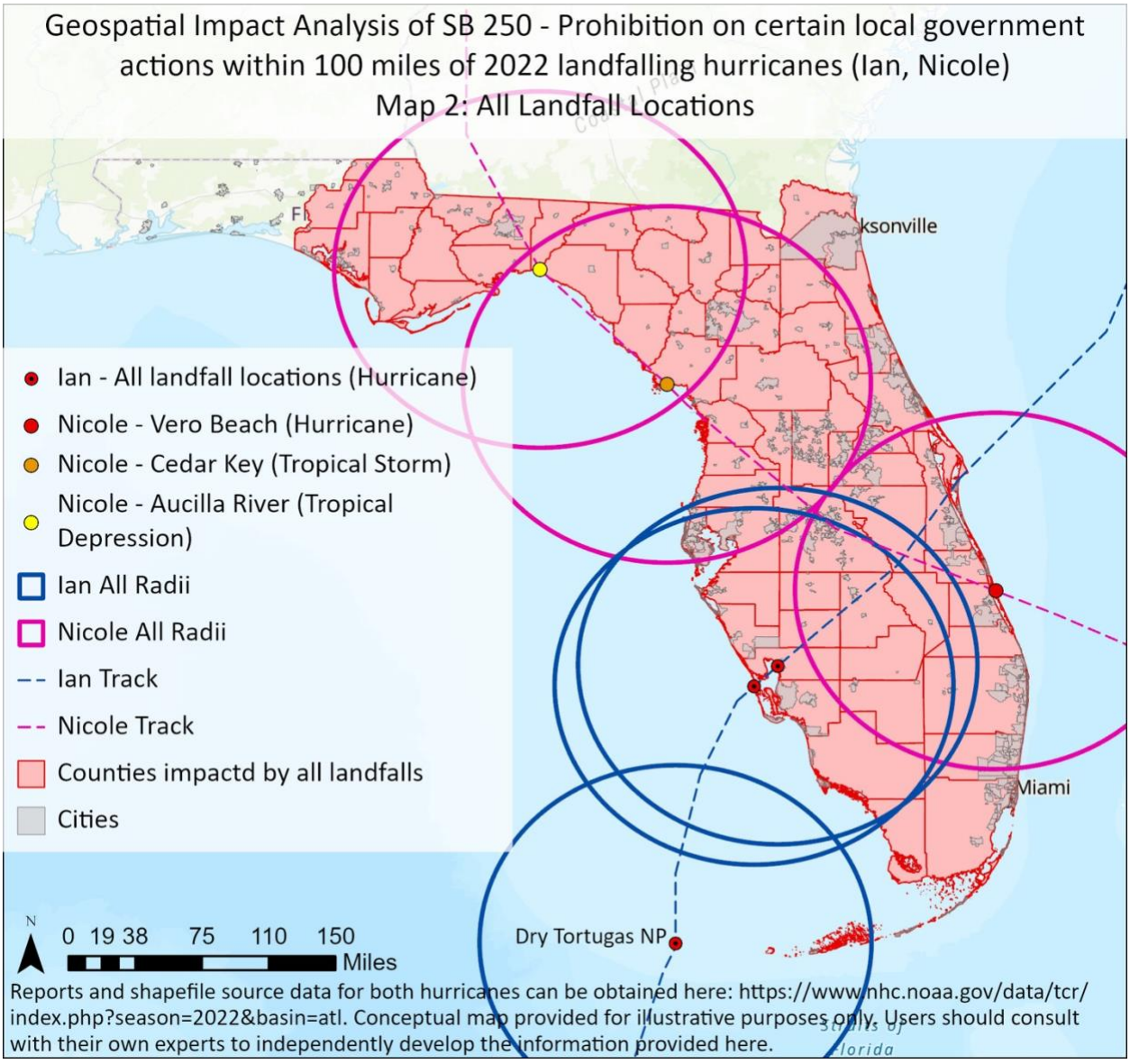
- **Landfall:** The intersection of the surface center of a tropical cyclone with a coastline….
- **Center:** Generally speaking, the vertical axis of a tropical cyclone, usually defined by a location of maximum wind or minimum pressure. The cyclone center can vary with altitude. In advisory products, refers to the center position at the surface.
- **Best Track:** A subjectively-smoothed representation of a tropical cyclone's location and intensity over its lifetime. The best track contains the cyclone's latitude, longitude, maximum sustained winds, and minimum sea-level pressure at 6-hourly intervals. Best track positions and intensities which are based on a post-storm assessment of all available data, may differ from values contained in storm advisories. The also will not generally will not reflect the erratic motion implied by connecting individual center-fix positions.

Using ArcPro, we downloaded NHC Tropical Cyclone GIS data for both Hurricane's Ian and Nicole. We then identified the point of intersection of the NOAA "Best Track" for each hurricane with the shoreline using the 'World Topographic Map' basemap for each landfall. We then drew a 100-mile radius around that point to determine where it intersects with county and municipal boundaries, which were obtained from the Florida Geographic Data Library. While this approach may seem straight forward there are some interpretative difficulties. Map 1 illustrates the statute's 100-mile reach when only the landfalls at Cayo Costa and Vero Beach are considered, which are the landfalls most often discussed in popular literature.



However, according to the NOAA National Hurricane Center, each storm had more than one landfall within the State. The NHC's March 2023 Tropical Cyclone Report on Hurricane Nicole (AL 09092022) describes 3 landfalls -near Vero Beach (hurricane), near Cedar Key (tropical storm), and at the mouth of the Aucilla River (tropical depression) - each of which is represented on

map 2. The NHC's April 2023 Tropical Cyclone Report on Hurricane Ian, describes 3 Florida landfalls - in the Dry Tortugas (hurricane), at Cayo Costa (hurricane) and at Punta Gorda (hurricane) - each of which is represented on Map 2.



In addition, it is not clear whether a storm that makes its first landfall as a hurricane, remains a hurricane for the purposes of SB 250 even though it had been downgraded to a tropical storm or depression during subsequent landfalls, as was the case with Nicole (but not Ian, which remained a hurricane at each landfall, and notably, , made its first landfall in the Dry Tortugas). The Florida Insurance statute may offer guidance. This statute makes the status of a storm as a hurricane for insurance purposes dependent on the presence of and hurricane watches or warnings, as well as "hurricane conditions."

Section 627.4025(2)(c), Florida Statutes, defines hurricane for insurance purposes as:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

1. Beginning at the time a hurricane watch or hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service;
2. Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and
3. Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

Florida's Chief Financial Officer provides an illustration using Hurricane Irma that might be instructive:

> "After Hurricane Irma made landfall and travelled northward through Florida, it was downgraded to a tropical storm and later a tropical depression. Those downgrades had no bearing on the hurricane deductible since Hurricane Irma was a named hurricane when the first hurricane watch or warning was issued for Florida by the National Hurricane Center." (at page 6).

The CFO does not refer to subpart (c)2 in this example: "continuing for the time period during which hurricane conditions exist,…" and this term is not clarified in the statute. However, the term "hurricane conditions" is used by the U.S. military (including the Florida Civil Air Guard) as an alert scale based on the possibility of tropical cyclone force winds within specific windows of time – perhaps not unlike watches and warnings. Applying the CFO interpretation, SB 250 as enacted could apply to both Ian and Nicole's subsequent landfalls. Consequently, as shown on Map 2, the time-limited preemptive language of SB 250 would affect most of the State of Florida, accomplishing a similar result to the original language which the amended bill replaced. This may lead to a conclusion that the Legislature intended to use only the Cayo Costa and Vero Beach landfalls as the point of reference from which to measure a 100-mile radius, but this is far from clear from the statute as written.

SB 102 - Live Local Act

MEMORANDUM

To: Kraig Conn, General Counsel
Florida League of Cities

From: Susan L. Trevarthen

Date: June 26, 2023

RE: The League's Guide to Section 5 of the 2023 Live Local Act for Florida Municipalities

Effective July 1, 2023, the Live Local Act ("Act") allocates significant funding and incentives to affordable housing, which is something that the Florida League of Cities ("the League") strongly supports. However, Section 5 of the Act revises Section 166.04151, Florida Statutes, to create a new subsection (7) precluding local governments' ability to apply their use, height, and density restrictions and hearing processes to qualifying developments with affordable housing units.[1]

As always, the League stands against preemption of home rule. Several amendments were made to this bill in the legislative process, to refine and narrow the scope of these preemptions, but ultimately they were adopted.

Importantly, Section 5 of the Act does **not** preempt other applicable local laws and regulations. So, even if a project is entitled to excess height or density, or proposes residential use allowed in an area that would not otherwise allow residential use, the project must still comply with all of the other applicable land development regulations. Examples include landscaping, floodplain, parking, impervious surface, and design regulations. In addition, the project must otherwise be consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use.

Questions have been directed to the League regarding how to apply the Section 5 preemptions to various specific applications. As always, the League counsels its members to consult their municipal attorneys for definitive guidance on the law tied to the specific facts and circumstances of their charters, comprehensive plans, and codes of ordinances. Some communities may choose to enact code changes to specify how these preemptions will be handled; others may issue administrative guidance documents or interpretations. The key thing is to develop a strategy, and apply it consistently to those who may seek to take advantage of the Act's preemptions in a municipality.

This guide will address the most common inquiries as they are likely to affect typical municipalities. It cannot provide a definitive interpretation of how the Act may apply to specific fact patterns arising in one of the hundreds of Florida municipalities and their diverse and unique regulations, but it provides a starting point for the analysis. The guide may be supplemented, as additional inquiries are received and implementation experience with the Act progresses.

TIMING ISSUES

[1] It also modifies the terms of a preexisting option for municipalities to incentivize affordable housing in Section 163.04151(6), F.S.

Q: When does the Act become effective?

A: July 1, 2023. Section 5 of the Act expires October 1, 2033.

Q: If an application for a qualifying development was received before July 1 but it will not be approved until after July 1, is the application eligible to use the preemptions in Section 5 of the Act?

A: While the Act does not address this issue, general background principles of Florida vested rights law provide that the law that is applicable to any development application is the law in place at the time of the approval. Projects are not entitled to follow the law as it exists at the time of application; if the law changes before approval, they must meet the new standards of the law. Following this logic, one might conclude that a project under review as of July 1, 2023 must be allowed to take advantage of the Act.

Q: Does a municipality have to allow projects the benefit of the Act if it has a moratorium that was in place before July 1, 2023?

A: Not necessarily. The Act specifically addresses what rules apply to the approval of a development application. It does not contemplate deviation from other applicable laws. Moratoria may be based on the lack of sewer or water capacity or other problems that require a pause in all development approvals for planning purposes. Once the moratorium is over, the Act will apply. Some moratoria are drafted in a more targeted way so that only certain kinds of development are paused; the municipal attorney should evaluate the particular moratorium to determine whether it will apply to qualifying developments.

QUALIFYING DEVELOPMENTS

Q: What kind of development projects can take advantage of the preemptions in Section 5 of the Act?

A: A multifamily or mixed use residential development containing at least 40% affordable housing units. For purposes of this guide, we will refer to such developments as “qualifying developments.”

Q: What is “affordable” for purposes of a development qualifying for these preemptions?

A: Affordable housing units that target households making up to 120% of the area median income. The cost (including utilities) for such a unit cannot exceed 30% of the tenant’s income, and will vary based on household size. The commitment to affordability has to last for at least 30 years.

Q: Who assures that these affordability requirements remain in place for the required period of time?

A: The Act is silent on this issue, but the municipality should include a mechanism for reporting and monitoring within its approval documents, to assure that this requirement is satisfied. A qualifying development under the Act will be allowed to build to a higher density or height than would otherwise be allowed under local laws, and will be able to develop residential use in zoning districts that do not otherwise allow such use. It will likely be difficult to convert a qualifying development to a conforming development in the event that it fails to continue to qualify under the Act. It would thus be wise for the applicant and the municipality to take all steps necessary to make sure that the development continues to qualify for the Section 5 preemptions throughout its life.

Q: What is a “mixed use development” that may qualify for the Section 5 preemptions?

A: A development with at least 65% of the total square footage devoted to residential purposes. No maximum amount of residential is listed in the Act, but there clearly needs to be some nonresidential use for the project to fairly be described as mixed use and qualify for the preemptions.

Q: Do special rules apply if the qualifying development is transit-oriented?

A: Qualifying developments that are located within a half-mile of a major transit stop must be considered for parking reductions if the major transit stop is accessible from the proposed development. “Major transit stop” is as defined in the municipality’s land development code.

USE PREEMPTION

Q: What is the impact of allowing qualifying developments in commercial, industrial, and mixed use zoning districts?

A: The Act preempts municipal use regulation by allowing affordable residential units to be located in zoning districts where they would otherwise be prohibited. It is important to note that development within residential districts is unaffected by the Act.

Q: What are “commercial” and “industrial” zoning districts?

A: These terms are not defined in the Act, but have a commonly understood meaning that can be the starting point for determining how the Act applies in your community. You should start with an examination of your comprehensive plan and zoning code, and follow whatever definitions they include, along with any statements of purpose or intent as to the various types of zoning districts.

Commercial zoning districts typically allow various forms of retail and business uses: uses that involve the sale and purchase of goods and services.

Industrial zoning districts typically allow various forms of light or heavy manufacturing, warehousing, and assembly uses.

Q: Are temporary uses relevant to determining these categories?

A: No, temporary uses such as construction staging or special events should not be considered as part of this analysis.

Q: If the qualifying development seeks to locate in a zoning district that has no regulations for residential development, how does the municipality review the project’s compliance for matters other than height, density, and use?

A: The Act requires the municipality to apply its regulations for multifamily development from the zoning district(s) where it is allowed to the qualifying development. Municipalities will need to determine how to apply this provision if they have multiple multifamily districts.

Q: In the process of determining what regulations apply to the qualifying development, if it is possible that more than one development standard may apply, must the municipality apply the most liberal standard?

A: No. The Act specifically preempts and guarantees these projects greater rights as to height, density and use. It does not preempt, and specifically requires qualifying developments to follow, other applicable laws. Outside of the specific preemptions of Section 5, the municipality should interpret and apply its code as it normally would, using accepted standards of interpretation and professional judgment and applying its interpretations even-handedly to similarly situated applicants.

Q: How does Section 5 of the Act affect a municipality that has adopted form-based districts rather than use-based zoning?

A: To the extent that a municipality’s form-based districts are purely form-based and do not incorporate elements of use regulation, all districts would allow all uses. So residential use would be allowed in all

districts, and there are no "industrial, commercial, or mixed use" zoning districts within which to apply the Section 5 preemptions.

However, most form-based codes are hybrid, and retain certain use-based regulations and districts. A careful analysis of each particular code may be necessary to determine how the Act applies to development in a given municipality with a form-based code.

Q: Must a municipality always allow a pure residential project in commercial and industrial districts?

A: No. If a municipality[2] designates less than 20% of its land area as commercial or industrial, then a multifamily project seeking to use the Act must be mixed-use residential, with at least 65% residential square footage. Another difference with these municipalities is that the project can only locate in a commercial or industrial zoning district.

The Act does not specify how the 20% threshold is measured, so a reasonable methodology should be developed by the municipality.

Q: Are there any areas in which a development project cannot take advantage of the Act?

A: Yes. Property defined as recreational and commercial working waterfronts in section 342.201(2)(b), F.S., located in any area zoned industrial.

MIXED USE ZONING DISTRICTS AND SECTION 5 OF THE ACT

Q: What are "mixed use" zoning districts?

A: The term is not defined in Section 5, and was not used in Section 166.04151 before the Act. "Mixed use" zoning districts, at the most basic level in zoning regulation, are districts that allow more than one type of land use. For example, a district that allows both a clothing store and a gift shop would not traditionally be seen as a mixed use district. Both of these uses are within the same type of land use: they are commercial uses traditionally found within commercial districts.

Similarly, accessory uses are allowed in all districts, and do not render the district "mixed-use." Examples of accessory uses include parking, storage, solar panels, home occupations, a lobby store in a hotel, or a caretaker's cottage on a large industrial site.

In contrast, districts that allows both non-residential and residential uses, or districts that allow combinations of different types of non-residential uses, are generally considered to be mixed use districts.

Another distinction between different kinds of mixed use districts is whether they allow the mixing of uses in the same building, such as a building with retail uses on the first floor and residential units above (vertically mixed uses) or they only allow the mixing of uses in a parcel side-by-side, such as a residential community with an outparcel of commercial use (horizontally mixed uses). The standards for these two kinds of development are quite different. For example, there may be a landscaping buffer or setback required between the residential and nonresidential uses in a horizontally mixed use development. It would be absurd to discuss a landscaping buffer or setback between uses when the uses are in the same building. The Act is silent on the distinction between vertical and horizontal mixed uses.

Q: What kind of "mixed use" zoning districts are affected by Section 5 of the Act?

In the absence of any definition, zoning districts that provide for a range of different types of uses.

[2] This same rule applies to a multicounty independent special district that meets certain requirements and has less than 20% of its land designated for commercial or industrial use.

Q: Does Section 5 of the Act apply to “mixed use” zoning districts that allow residential uses?

Under a plain reading of the text of this section of the Act, the answer might be no. Section 5 revises subsections (6) and (7) of Section 166.0451 to expand affordable housing by providing an option (subsection (6)) or a mandate (subsection (7)) for multifamily residential or mixed use residential development to be able to locate in zoning districts that do not already allow such uses.

Subsection (6) of Section 166.04151 already provided an option for local governments to incentivize projects with at least 10% affordable housing units in commercial and industrial – and residential - zoning districts. The Act removes the reference to residential zoning districts, so that this optional incentive only applies to commercial and industrial zoning districts going forward.

Similarly, the new subsection 166.04151(7) seeks to incentivize both multifamily use and “mixed use residential” uses that meet the more detailed requirements of subsection (7) for affordability. The “mixed use residential” uses must have at least 65% of their total square footage devoted to residential purposes. The zoning districts in which the preemptions of subsection (7) apply are “commercial, industrial, or mixed use.”

When Section 5 of the Act refers to the type of development or use that can utilize its mandates and incentives, it consistently refers to “mixed use residential”. When Section 5 of the Act refers to the zoning districts within which such development can seek to locate, it only refers to “mixed use.” Thus, a plain reading of the Act is that it incentivizes qualifying “mixed use residential” developments to locate within “mixed use” zoning districts that do not allow residential uses. The distinction in terminology makes sense given the evident purpose of Section 5 of the Act: to promote affordable housing development by allowing it to be located in areas in which it would not otherwise be allowed.

Q: Can the statute be interpreted to allow qualifying developments to be able to locate in mixed use zoning districts that allow residential uses?

A: If a court were to conclude that the use of the term “mixed use” without definition is somehow ambiguous, then other canons of statutory construction would come into play. It is possible that an interpretation that failed to apply Section 5's preemptions to mixed use residential zoning districts could undermine the legislative intent. For example, if all of a municipality’s commercial zoning districts allow residential use and the municipality has little industrially zoned land, a failure to allow the Section 5 preemptions to apply in those commercial districts might defeat the purpose of the statutory scheme to expand opportunities for affordable housing. Interpretations that defeat the statutory purpose are generally disfavored.

A challenge with reading the Act differently – to allow its preemptions to be applied to development in mixed use zoning districts allowing residential uses – is that the Act directs municipalities to apply the development standards from its multifamily residential zoning districts to the review and approval of a qualifying development seeking to take advantage of the benefits of Section 5 in other districts. This provision is necessary and makes sense for zoning districts such as commercial, industrial or mixed use that do not already allow for residential uses; by definition, they will not have appropriate regulatory standards for residential development.

In contrast, mixed use zoning districts that allow residential uses already have regulatory standards for such uses. Displacing standards which are calibrated to the specific needs of mixed use residential development with standards for a straight multi-family residential development could lead to absurd results under a particular municipal code. For example, a mixed use zoning district that allows residential uses will specify the amount, location, and character of the various uses. It will recognize the different peak use times of residential and nonresidential uses in the parking standards and in the design of the traffic flow of the development. Also, the kinds of setbacks and buffers that are typical of a straight residential development may be inconsistent with the design needs of a mixed use development, particularly if it is vertically mixed. Interpretations that lead to absurd results are also generally disfavored.

The hundreds of municipalities in Florida have a wide range of different types of mixed use zoning regulations, and it is not possible to generalize as to all of the implications in this guide. In short, if a municipality has already provided appropriate standards for residential uses as a component of a mixed use zoning district where a qualifying development is proposed, the municipal attorney should evaluate whether applying the standards from the multifamily zoning district would lead to absurd results. And if the proposed interpretation of Section 5 of the Act results in no project being able to apply it in a given municipality, the municipal attorney should evaluate whether the interpretation defeats the statutory scheme. If so, in either case, the municipal attorney might consider whether a different interpretation is appropriate.

HEIGHT AND DENSITY PREEMPTIONS

Q: How are density regulations preempted by Section 5 of the Act?

A: A municipality must approve a qualifying development with a density equal to the highest residential density allowed within any of the municipality's residential zoning districts, located anywhere in its jurisdiction. Thus, identifying the density standard to apply to the qualifying development simply requires reading the municipal zoning code and determining the maximum density. There is no minimum density requirement in the Act.

Q: How are height regulations preempted by Section 5 of the Act?

A: As with density, the height preemption comparison is drawn from inside the municipality's jurisdiction, but only nearby properties are considered. A municipality may be required to allow a qualifying development to have greater height if any commercial or residential development located within a mile is allowed to be taller than development on the site of the proposed qualifying development.

There are other differences from the density preemption. First, the application of the height preemption requires an examination not just of the zoning code but also of the zoning map, to determine what zoning districts are mapped within a mile of the qualifying development and within the municipal jurisdiction. Second, the Act guarantees a minimum of three stories in height to qualifying developments, regardless of whether three stories are allowed on properties located within a mile of the site of the qualifying development.

Q: What does it mean for density or height to be "allowed"?

A: That height or density that is allowed by the currently applicable zoning codes and comprehensive plans in your community.

It does not include height or density that was never actually approved by the municipality. Illegal structures, subdivisions, or conversions may not be used to establish the permitted height or density.

It also does not include legal nonconforming height or density. So if a development was allowed and approved when built, but the regulations have changed such that it could not be built again with the same height or density, it cannot be used as the comparator to establish height or density for the qualifying development.

Developments that were approved pursuant to a height or density variance are also not proper comparators for establishing the height and density preemptions for qualifying developments. By definition, those heights and densities were not "allowed", and were only available pursuant to a site-specific determination that no alternative was available for the property.

Q: How do height or density bonuses affect this analysis?

A: Bonus density or height is not allowed as of right in the zoning district. It may only be earned through satisfaction of the criteria for the bonus program. Therefore, bonus density or height should not be considered part of the "allowed" height or density for purposes of the preemptions in Section 5 of the Act.

Alternatively, if a municipality wishes to allow consideration of bonus height or density, then a qualifying development that seeks to use that bonus height or density should be required to satisfy all of the requirements of the bonus program. Otherwise, the qualifying development may only seek to use the height or density allowed by right in those zoning districts.

Q: Must a qualifying development always be able to construct the full density or height allowed by these preemptions?

A: No. The Act is clear that other laws continue to apply, and may work to limit the development potential of a particular parcel. For example, environmental regulations, setbacks, buffer requirements, lot coverage requirements, minimum unit sizes, parking and other development standards may all prevent a particular property from achieving the theoretical maximum amount of development. In addition, the development must otherwise be consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use.

APPROVAL PROCESSES

Q: How are approval and hearing processes preempted by Section 5 of the Act?

A: If a qualifying development seeks to locate within a commercial, industrial, or mixed use zoning district, the municipality may not require rezonings, land use changes, special exception or conditional use approvals, variances, or comprehensive plan amendments in order to obtain the height, density, and use preemptions.

Q: So what process applies to these projects?

A: Municipalities must administratively approve a qualifying development without holding hearings before the governing body or other board, if it otherwise complies with all other regulations.

If the qualifying development requires a variance, special, exception, or other type of approval, unrelated to use, height, or density, those separate processes are not preempted and must be followed.

Q: What does it mean to "administratively approve" a project?

A: The project will still need to undergo the typical application processes in a municipality. It will need to submit an application with an application fee, and supporting plans and information demonstrating that it satisfies all applicable laws. For municipalities that do not already have processes for administratively approving certain kinds of development that can be adapted to this purpose, it may be beneficial to create one.

The municipal staff will still need to assess the application's compliance with those laws before any development orders or permits can be approved. That may involve review by a staff Development Review Committee or individual review by each affected department, depending on how each municipality structures its process. It may also involve review from other agencies, such as the county or a water management district. The public may provide input into such processes by submission of written comments.

Some municipalities already have administrative hearing processes where a department head, municipal manager or hearing officer individually reviews and decides whether to approve a project. Those processes may or may not provide a mechanism for the public to be present or to be heard by that decision maker.

Q: Are there specific provisions that should be considered for inclusion in a development order approving a qualifying development?

A: As noted above, a unique aspect of development under Section 5 of the Act is that it only qualifies for the preemptions if it maintains its affordability for 30 years. It is therefore advisable to include mechanisms in the development order for monitoring and continuing to assure that these requirements are met, such as requiring that a covenant be recorded for the benefit of the approving municipality, with rights of enforcement.

Also, because the qualifying development is only eligible for approval pursuant to the Live Local Act, the municipality might want to include findings in the development order as to how the application satisfies the statutory criteria. The development order could also specifically find that the project is not otherwise "allowed" under the municipality's code and plan.

Q: Does the Act require municipalities to waive height restrictions around an airport?

A: Likely not. FAA approval is still necessary for the height of development in flight paths, and other height and density limits related to runway crash zones around civilian or military runways are usually a product of state or federal law that would not be preempted by the Act. As always, examine the specifics of your regulations with your municipal attorney to determine what the right strategy is.

POLICY IMPACT OF SECTION 5 OF THE ACT

Q: Some municipalities have too much residential development and not enough commercial/industrial development to maintain a sound fiscal basis. Is there anything municipalities can do to keep this new law from further exacerbating this problem?

A: As noted above, if a municipality designates less than 20% of its land area as commercial or industrial, then only mixed-use residential projects with at least 65% residential square footage can seek to take advantage of the Act. The remainder of Section 5 of the Act will apply.

One option to consider is amending the Code to change the existing zoning districts or create new zoning districts that are more attractive for multifamily projects to locate as of right in appropriate locations and to include nonresidential uses. That evaluation should also include consideration of whether zoning map amendments are necessary so that these districts are applied to locations that are appropriate for mixed use residential development. A municipality might even consider allowing an applicant to seek administrative approval of the application of an overlay or floating zone with appropriate standards to commercial, industrial and mixed use zoned properties.

Policy Development Process

2023-2024 FLC Legislative Policy Process

The Florida League of Cities' (FLC's) Charter and Bylaws specify that the League shall engage only on legislation that pertains directly to "municipal affairs." "Municipal affairs" refers to 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 Platform. The Legislative Platform addresses priority issues of statewide interest that will most likely 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 2024 Legislative Session on January 9. The League's legislative policy committee meetings commence in September 2023 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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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, 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 League President.

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

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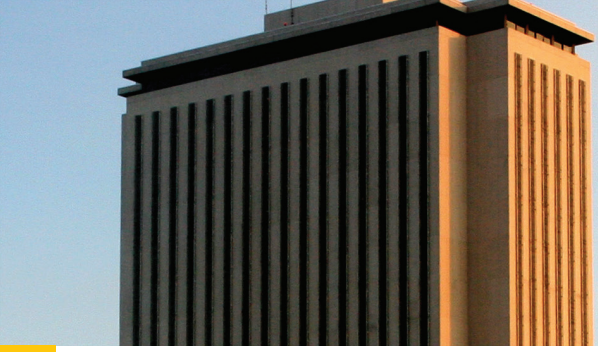

In addition, a legislative policy committee may, but is not required to, recommend ONE policy position related to other relevant legislative issues. The policy position must satisfy the same criteria above for legislative priorities. The recommended policy position will be considered by the Legislative 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 Platform and participation at meetings, Legislative Action Days and other legislative-related activities.

2023 Legislative Policy Committee Meeting Dates

- September 8, 2023, 10:00 a.m. to 2:00 p.m. at the Rosen Centre Orlando, 9840 International Drive, Orlando, FL 32819
- October 6, 2023, 10:00 a.m. to 2:00 p.m. at the Gaylord Palms Resort & Convention Center, 6000 West Osceola Parkway, Kissimmee, FL 34746.
- November 30, 2023, during the FLC Legislative Conference at the Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819.

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

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Key Dates

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2023 - 2024 Key Legislative Dates

October 2023	
6	FLC Policy Committee Meetings (Round 2) – Gaylord Palms Resort & Convention Center, 6000 West Osceola Parkway, Kissimmee, FL 34746
9-13	Interim Legislative Committee Meetings (Senate only)
16-20	Interim Legislative Committee Meetings
17-18	FAST Fly-In – Washington, D.C.
November 2023	
6-9	Interim Legislative Committee Meetings
13-17	Interim Legislative Committee Meetings
16-18	NLC City Summit – Atlanta, GA
29-Dec. 1	FLC Legislative Conference – Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819
December 2023	
4-7	Interim Legislative Committee Meetings
11-15	Interim Legislative Committee Meetings
January 2024	
4	FLC Pre-Legislative Session Webinar at 2:00 p.m. ET
9	Regular Legislative Session Convenes
29-31	FLC Legislative Action Days – Tallahassee, FL
March 2024	
8	Last Day of Regular Legislative Session
11-13	NLC Congressional City Conference – Washington, DC
19	FLC Post Legislative Session Webinar at 2:00 p.m. ET

For further details about the mentioned events, contact *medenfield@flcities.com*.

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*.

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Notes

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