



**PUBLIC
POLICY**



2021 FACA Legislative Briefing

Edward G. Labrador
FAC Senior Legislative Counsel

PREEMPTIONS



Local Occupational Licensing (HB 735) – Approved 06/29/2021

- Expressly preempts the licensing of occupations to the state.
- Defines “occupation” to include a paid job, work, trade, employment, or profession and defines “licensing” to include any training, education, test, certification, registration, procedure, or license that is required for a person to perform an occupation.
- Exempts local government license requirements imposed before January 2021 but provides that such local requirement expires July 2023 and may not be modified before the expiration. It exempts any local government licensing requirement that is expressly authorized by general law.
- Prohibits a local government from requiring a person to obtain a license for a job scope that does not substantially correspond to the job scope of certain contractor categories specified in section 489.105(3)(a) – (o) and (q) or authorized in section 489.1455(1), including but not limited to the following: painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning or ornamental iron installation.
- The bill authorizes local governments to issue journeyman licenses in the following trades: plumbing; pipe fitting; mechanical; HVAC; electrical; or alarm systems.

PREEMPTIONS



Express Preemption of Fuel Retailers & Related Transportation Infrastructure – (HB 839)

- Prohibits a local government from banning (or taking action that results in a de facto ban) gas stations or related transportation infrastructure necessary to provide fuel to gas stations.
- Prohibits a local government from requiring gas stations to install particular types of fueling infrastructure, such as electric vehicle charging stations.
- A local government may adopt and implement requirements relating to the siting, development, or redevelopment of gas stations or related transportation infrastructure, so long as the requirements do not constitute a de facto prohibition within zoning or land use classifications where such infrastructure is consistent with other allowable uses.

PREEMPTIONS



Preemption Over Restriction of Utility Services (HB 919)

- Prohibits a local government from taking any action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by various electric or gas utilities, transmission companies or dealers.
- The bill does not prohibit a governmental entity from adopting regulations or policies governing an electric or natural gas utility that it owns or operate, and directly controls.

PREEMPTIONS



Florida Seaports Preemption (SB 1194 – Transportation Package)

- Creates §311.25, F.S., relating to State Preemption of Seaport Regulations. Prohibits a local ballot initiative or referendum from restricting maritime commerce in all of Florida’s seaports, including, but not limited to, regulations related to:
 - Vessel type, size, number, or capacity;
 - Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state or any local jurisdiction;
 - Source, type, loading, or unloading of cargo; or
 - Environmental or health records of a particular vessel or vessel line.
- A local ballot initiative or referendum that was adopted before, on, or after July 1, 2021, and any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in such an initiative or referendum, is prohibited, void, and expressly preempted to the state.
- Voids the three referendums approved by City of Key West voters in the November 2020 General Election, which restricted the types of cruise vessels that could call on the Port of Key West.

PREEMPTIONS



Renewable Energy (SB 896) – Approved 06/29/2021

- Encourages renewable solar electrical generation and declares the importance of constructing solar facilities to maintain the availability of renewable energy that is vital to Florida's energy production and economy.
- Defines the term "solar facility" to mean a production facility for electric power which meets specified criteria.
- Mandates that solar facilities are a permitted use in all agricultural land use categories in a local government's comprehensive plan, and all agricultural zoning districts within an unincorporated area.
- Solar facilities must comply with setback and landscape buffer requirements and a county may enact an ordinance establishing such setback and buffer requirements.
- Exempts any site that was the subject of an application to construct a solar facility submitted to a local governmental entity before July 1, 2021 (meant to apply to two solar projects that were rejected by Alachua and Walton counties).

PREEMPTIONS



Home-Based Businesses (HB 403) – Approved 06/29/2021

- The bill creates s. 559.955, F.S., relating to home-based businesses, and prohibits local governments from taking any action to license or otherwise regulate a home-based business except as authorized in the act.
- Specifies a home-based business that operates from a residential property: may operate in an area zoned for residential use; may not be regulated or licensed in a manner that is different from other businesses except as provided; and is only subject to applicable business taxes under chapter 205 in the county and municipality where it is located.
- The act provides that a business is considered home-based if it operates from a residential property and meets specified criteria.
 - Employees must reside at the residence, except up to two employees or independent contractors (in addition to any remote employees).
 - Parking related to the business must comply with local zoning and the need for parking may not be greater in volume than would normally be expected at a residence. A local government may regulate the use of vehicles or trailers associated with the business, provided the regulations are not more stringent than those applicable to residences where no business is conducted.

PREEMPTIONS



Home-Based Businesses (HB 403) – Approved 06/29/2021

- Vehicles and trailers associated with a home-based business must be parked in legal parking spaces and cannot be located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Local governments may regulate the parking or storage of heavy equipment that is visible from the street or neighboring property.
- When viewed from the street, the use of the residential property is consistent with uses of residential areas that surround the property. External modifications of a residential dwelling must conform to the character and aesthetics of the neighborhood. Retail transactions may not be conducted at a structure other than the dwelling.
- The business activities must be secondary to the property's use as a residence and must comply with relevant local or state regulations regarding signage and equipment or processes that create noise, vibration, heat, fumes, glare, dust, smoke, noxious odors and other similar external impacts. Local regulations of such external impacts may not be more stringent than those that apply to a residence where no business is conducted. In addition, the business activities must also comply with local, state, and federal regulations with respect to corrosive, combustible or other hazardous materials.
- Adversely affected home-based business owners may challenge local government actions in violation of the act's requirements and authorizes prevailing party fees and costs. Local requirements related to transient lodging establishments are not superseded by the bill.

PREEMPTIONS



Cottage Food Preemption (HB 663)

- Known as the Home Sweet Home Act, addresses the regulation of cottage food operations
- Cottage foods: Food products that have been determined by the Department of Agriculture and Consumer Services to be safe for production at a person's residence, such as breads, honey, cakes, and popcorn.
- Preempts the regulation of cottage food products to the state and prohibits any local law, ordinance, or regulation from regulating the preparation, processing, storage, and sale of cottage food products.
- Allows for the sale or delivery of cottage food products by U.S. mail or commercial mail delivery.
- Increases annual gross sales of cottage food products from \$50,000 to \$250,000.
- Now that HB 403 has become law, a cottage food operation must comply with the conditions for operation of a home-based business under s.559.995, F.S.

PREEMPTIONS



Public Works Projects (HB 53) – Approved 06/29/2021

- Modifies provisions of current law that prohibit the use of certain local preferences relating to competitive solicitation for public construction services and public works projects that receive state funding.
- §2555.0991(2), F.S., prohibits the use of certain local preferences in competitive solicitations for public construction services when the state pays 50% or more of the project costs including preferences relating to: 1) the contractor’s maintaining an office or place of business within a particular local jurisdiction; 2) the contractor’s hiring employees or subcontractors from a particular jurisdiction; or 3) the contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.
- The act removes the 50 percent state funding threshold and prohibits the use of local preferences if the project will be paid for with any state funding.

PREEMPTIONS



Public Works Projects (HB 53) – cont.

- When the state is paying 50% or more of the project costs, §255.0992, F.S., provides that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier to: pay employees a particular wage; provide employees a specified type of benefits; control, limit or expand staffing; or use employees from a designated source.
- Revises the definition of “public works project” to remove the 50% state funding threshold and replaces it with a threshold of over \$1,000,000 in value paid for with state funds.
- Additionally, the act prohibits the state or any political subdivision that contracts for a public works project from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process because of the geographic location of its offices or the residences of its employees.

PREEMPTIONS



Public Works Projects (HB 53) – cont.

- Requires the Office of Economic and Demographic Research (EDR) to include in its annual assessment of the state’s water resources an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure.
- By June 30, 2022, and every five years thereafter, each county, municipality, or special district providing wastewater or stormwater services must develop a needs analysis for its jurisdiction over the subsequent 20 years and to submit the analysis to EDR.
- EDR must use this information to develop a statewide needs analysis for inclusion in its annual assessment.

PREEMPTIONS



Firearms and Ammunition Preemption (SB 1884)

- Revises the current preemption of local government regulation of firearms and ammunition.
- Specifically provides that written or unwritten policies are subject to statutory provisions allowing for recovery of damages, if such policies violate the statutory preemption.
- In addition, it provides that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for purposes of recovering reasonable attorney fees and costs when a governmental entity voluntarily changes its challenged regulation after a complaint is filed.

COVID-19



Civil Liability for Damages Relating to COVID-19 (SB 72)

- Provides heightened legal protections against liability associated with the COVID-19 pandemic to certain business entities, educational institutions, governmental entities, and religious institutions.
- Requires COVID-19 damage claims to be plead with particularity and be supported by a physician's affidavit attesting to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions. If the plaintiff fails to submit a detailed claim or affidavit, the court must dismiss the action without prejudice.
- The court must determine whether the defendant made a good faith effort to substantially comply with the authoritative or controlling government health standards or guidance at the time the cause of action occurred. Plaintiff's burden to show lack of good faith effort.
- Evidence must be clear and convincing to recover damages. Claim must be commenced within one year of the alleged incident. The bill applies retroactively but will not apply to civil suits commenced before the effective date of the act.
- Also provides liability protections for COVID-19-related claims against health care providers including claims arising from the diagnosis or treatment of a person for COVID-19, providing a novel or experimental COVID-19 treatment, transmission of COVID-19, and a delay or cancellation of a surgical or medical procedure.

COVID-19



Protecting Consumers Against Pandemic-related Fraud (HB 9)

- Protects the public from fraudulent activity, or false misleading information relating to the availability and effectiveness of personal protective equipment (PPE) and fraudulent activity against COVID-19 vaccination availability.
- Prohibits the creation of websites, social media, emails, phone calls with false information with the intent to steal personal identification or to receive money.
- Makes these actions a third-degree felony.



Taxation (SB 50) – Park Randall “Randy” Miller Act

- Applies Florida’s sales and use tax to online/e-commerce sales from out of state retailers regardless of whether the entity has a physical presence within the state.
- Removes a provision that exempts an out-of-state dealer that makes retail sales into Florida from collecting and remitting any local option surtax.
- Temporarily diverts the increased collections in sales tax to the Unemployment Compensation Trust Fund until it is replenished to pre-pandemic levels.
- Once the Unemployment Compensation Trust Fund reaches its pre-pandemic balance, the bill reduces the business rent tax from 5.5% to 2%.



Impact Fees (HB 337)

- Revises the limitations and requirements to impose impact fees by local governments.
- If an impact fee increases not more than 25% over the current rate, the increase must be implemented in two equal annual increments.
- If a fee is increased between 25 and 50 percent over the current rate, the phase-in must be in four equal installments.
- Prohibits an increase of an impact fee greater than 50% and provides that an impact fee may not be increased more than once every four years.
- Provides an exception to these requirements if the governmental entity establishes the need for the increased fee pursuant to the rational nexus test, uses a study (completed within the 12 months preceding the increase) showing that extraordinary circumstances require the additional increase, holds at least two publicly noticed workshops, and adopts the increase by a 2/3 vote.
- The impact fee increase limitations are retroactive to January 1, 2021.



Impact Fees (HB 337) – Cont.

- Defines the terms “infrastructure” and “public facilities” for purposes of implementing statutory provisions regarding impact fees.
- Requires special districts to credit against the collection of impact fees, on a dollar-for-dollar basis, any contributions related to public facilities towards impacts on the same type of public facilities for which the contribution was made.
- Impact fee credits must be provided regardless of any provision in a local charter, policy, ordinance, development order or permit. The assignability and transferability of impact fees apply to all impact fee credits regardless of whether the credit was established before or after the bill’s effective date.
- Expands the requirements to which a governmental entity’s CFO must attest concerning the collection and expenditure of impact fees in compliance with §163.31801, and which must be included with the entity’s annual financial or audit report.

FINANCE, TAX, & ADMINISTRATION



Other bills of interest that PASSED:

- SJR 204 – Proposed constitutional amendment abolishing the Constitution Revision Commission.
- HB 35 - Legal Notices. Provides an option for governmental agencies, required by law to publish legal notices, to publish those notices on a newspaper's website in lieu of a paper-based publication. The bill amends s. 50.011 to revise the construction of publication requirements for legal notices that must be satisfied.
- SB 400 – Public Records. Prohibits an agency that receives a public records request from responding to the request by filing an action for declaratory relief against the requestor to determine whether the record qualifies as a public record or it is confidential or exempt from disclosure.

WATER & ENVIRONMENTAL SUSTAINABILITY



Statewide Flooding and Sea-level Rise Resilience (SB 1954)

- Creates the Resilient Florida Grant Program within the Department of Environmental Protection to provide grant funding, subject to appropriation, to local governments for resiliency planning and projects to adapt critical assets.
- Requires DEP to annually submit a Statewide Flooding and Sea Level Rise Resilience Plan. Initial plan is due by December 2021.
- Authorizes counties to enter into agreements to form regional resilience coalitions for the purpose of planning for the resilience needs of communities and coordinating intergovernmental solutions including multijurisdictional vulnerability assessments and project proposals for the statewide resilience plan.
- Funding will support vulnerability assessments and mitigation plans to prepare for the threats of flooding and sea level rises. Some grants require 50% cost share which can be waived for certain “financially disadvantaged small communities.
- Establishes the Florida Flood Hub for Applied Research at the University of South Florida’s College of Marine Science who will conduct modeling and research activities.



Reclaimed Water (SB 64)

- Creates a timeline to eliminate nonbeneficial surface water discharges by January 1st, 2032.
- Requires local governmental utilities to submit initial plans to DEP by November 1, 2021.
- The bill provides exceptions for discharge and hardship conditions
- Authorizes utilities to include conceptual plans for potable reuse projects or projects that provide direct ecological or public water supply, however, those plans cannot extend the timeline for implementation of the plan.
- Other provisions in the bill include:
 - Authorizes DEP to convene a technical advisory group to coordinate rulemaking and review of reviews for potable reuse;
 - Specifies that potable reuse is an alternative water supply, for purposes of making reuse projects eligible for alternative water supply funding;
 - Incentivizes the development of potable reuse projects;
 - Requires each county, municipality, and special district to promote the beneficial reuse of water by authorizing the use of residential graywater technologies within its jurisdiction, requiring such technologies to meet certain requirements, and providing incentives to developers to fully offset the capital costs of the technology;
 - Specifies the total dissolved solids allowable in aquifer storage and recovery in certain circumstances.



Ratification of Department of Environmental Protection Rules (HB 1309)

- Ratifies the Department of Environmental Protection's proposed biosolids rules, which are anticipated to have an estimated regulatory cost exceeding \$1 million.
- Exempts the biosolids rules from review and approval by the Environmental Regulation Commission.
- Ratifies the Department's proposed rules relating to the Central Florida Water Initiative (CFWI), modifies §373.0465, F.S., relating to the CFWI, and creates §373.0466 to establish the CFWI Grant Program.
- Expands the eligibility requirements for the state drinking water revolving loan fund to include priority consideration for projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan Aquifer.

AGRICULTURE & RURAL AFFAIRS



Farming Operations (SB 88)

- The bill amends the Florida Right to Farm Act to include agritourism in the definition of farm operations and particle emissions to the list of activities that constitute farm operations.
- Specifies that a farm may not be held liable for operations alleged to cause harm outside of the farm unless the plaintiff proves by clear and convincing evidence that the claim arises out of conduct that does not comply with state and federal environmental laws, regulations or best management practices.
- Provides that a nuisance action may not be filed unless the property affected by the activity is located within one-half mile of the activity.
- Limits compensatory damages in a private nuisance action to the reduction in fair market value of the affected property.
- Prohibits the recovery of punitive damages in nuisance actions unless based on substantially the same conduct of a civil enforcement judgment or criminal conviction that occurred within 3 years of the 1st action forming the basis of the nuisance action.
- Requires payment of attorney fees and costs by plaintiffs who fail to prevail in a nuisance action.

Technology



HB 1239 – Broadband Internet Infrastructure

- “Florida Broadband Deployment Act of 2021” revises the Office of Broadband’s strategic plan regarding goals and strategies for increasing and improving broadband availability and access.
- Revises the Office's duties to include improving the availability of, access to, and use of broadband.
- The broadband strategic plan must incorporate applicable federal broadband activities, identify available federal funding, and be submitted to the Governor, the Senate President, and the Speaker of the House by June 30, 2022. The Office must update the plan every two years.
- Local technology planning teams are required to work with rural communities to assist communities in understanding current broadband availability, locate unserved and underserved businesses and residents, identify assets relevant to deployment, build partnerships with providers, and identify opportunities.

Technology



HB 1239 – Broadband Internet Infrastructure – cont.

- Creates the Broadband Opportunity Program to award grants, subject to appropriation, to applicants who seek to install or deploy infrastructure that expands broadband service to unserved areas.
- Specifies the types of entities eligible for such grants, provides application requirements and evaluation criteria, and requires an agreement with each grant recipient that specifies performance conditions, including potential sanctions.
- Establishes a process by which an existing broadband provider may challenge a grant application on the grounds that the provider already offers or plans to offer service in the area at issue.
- Limits grant awards up to 50 percent of the total cost of a project, but no more than five million dollars per grant, and prohibits grant awards for projects that receive other federal funding.



HB 1239 – Broadband Internet Infrastructure – cont.

- Requires that, from July 1, 2021, to July 1, 2024, a municipal electric utility provide broadband providers access for attachments to utility poles at a promotional rate of \$1 per attachment per pole.
- Provides terms for these discounted attachments and specifies each party's responsibility for costs associated with replacement poles necessary to make attachments.
- Requires attachments to be made following the higher of the safety standards in the National Electrical Safety Code or the standards set by the utility.
- The promotional rate is available after application and can be lost if unserved or underserved customers are not provided with broadband internet access within 12 months of the attachments being made and the provider may be required to pay the prevailing rate for the attachments that failed to make broadband available to the intended customers.

HEALTH, SAFETY, & JUSTICE



Emergency Management (SB 2006)

- Creates a presumption that during an extended public health emergency, K-12 schools and businesses, to the greatest extent possible, should remain open as long as the health, safety and welfare of the students, school employees, and customers can be protected.
- Prohibits governmental entities, educational institutions, and businesses from requiring proof of vaccination and imposes fines of up to \$5,000 per incident for violating the prohibition.
- Adds a new subsection (4) to §252.38 relating to emergency management powers of political subdivisions to:
 - Define an “emergency order” as an order or ordinance issued or enacted by a political subdivision in response to an emergency pursuant to chapter 252 or chapter 381 that limits the rights or liberties of individuals or businesses within the political subdivision; except the term does not apply to orders issued in response to hurricane or weather-related emergencies.
 - Require that an emergency order be narrowly tailored to serve a compelling public health or safety purpose and provides the order automatically expires seven days after issuance but may be extended by majority vote of the governing body, as necessary, in seven-day increments for a total duration of not more than 42 days.
 - Authorize the Governor to invalidate an emergency order of a political subdivision if the governor determines the order unnecessarily restricts individual rights or liberties.
 - Prohibit a local government from issuing a “substantially similar” order once an emergency order subject to the provisions of subsection (4) expires.

HEALTH, SAFETY, & JUSTICE



Emergency Management (SB 2006) – Cont.

- Amends §252.46 to specify that failure of a political subdivision to file an order or rule with the office of the clerk or recorder within three days after issuance voids the order or rule.
- Provides that a local government order that imposes a curfew restricting travel or movement must allow persons to travel to and from their places of employment.
- Emergency ordinances, declarations, and orders adopted by a political subdivision under the authority of ss. 252.31-252.90 must be available on a dedicated webpage accessible through a link on the political subdivision's homepage, and a link must be provided to the Division of Emergency Management.
- Requires any agency or political subdivision that accepts grants, loans, funds, payments, services, equipment, supplies, or materials under section 252.37, F.S. to submit in advance a detailed spending plan to the legislature; except the requirement does not apply to the receipt of any funds from the federal government as part of an expedited project worksheet in anticipation of emergency response expenditures.

HEALTH, SAFETY, & JUSTICE



Emergency Management (SB 2006) – Cont.

- If an emergency situation precludes advanced submission of a spending plan, the political subdivision must submit the spending plan within 30 days of initiating any expenditures. The spending plan must be resubmitted every 30 days as long as the emergency continues and funds continue to be disbursed.
- A detailed spending plan is not required for emergency response activities, including emergency response that includes emergency protective measures or debris removal. Instead, the agency or political subdivision must provide the Legislature notice of all expenditures in aggregate categories incurred in the emergency response no later than 30 days after the expenditure is incurred. The entity must also provide the Legislature a copy of any project worksheet submitted to FEMA within 7 days of its submission.
- Substantially revises the duties and powers of the governor and executive agencies relating to emergency management.



Governmental Actions Affecting Private Property Rights (HB 421 & 1101)

- Modifies the Bert Harris Act by:
 - Revising the term “action of a governmental entity” to include adopting or enforcing any ordinance, resolution, regulation, rule, or policy and clarifies the term “real property” to include surface, subsurface, and mineral estates and other land interest held by a property owner.
 - Reducing the timeframe, from 150 days to 90 days, under which a property owner must notify the government before filing a court action.
 - Specifying that written settlement offers are presumed to protect the public interest.
 - Allowing the property owner to have the court, rather than a jury, determine damages.
 - Extending the point from which a prevailing property owner may recover attorney fees and costs – from the date of filing the circuit court action to the date the property owner presents the claim to the head of the governmental entity.
 - Allowing a property owner, who files a Harris claim but later relinquishes title to the property, to continue pursuing the claim through final resolution including any appeals. Essentially reverses the Second DCA's recent opinion (April 7, 2021) in *Dean Wish, LLC v. Lee County*.

COMMUNITY & URBAN AFFAIRS



Elections (SB 90)

- The bill makes several changes to the Election Code, relating to voter registration, vote-by-mail ballots, voting systems, canvassing boards, voter signatures, third party voter registration, and secure drop boxes.
- Requires notice to the Legislature and Attorney General in any civil action challenging an Election Code provision's validity in which a state or county agency or officer is a party in state or federal court when: settlement negotiations begin; of any proposed settlement; and at least ten-days prior to a settlement is final.
- Prohibits agencies or state or local officials responsible for conducting elections from soliciting, accepting, using, or disposing of any donations from an individual or nongovernmental organization to fund election related expenses, voter education, voter outreach, or registration programs.
- Expands the current no-solicitation zone from 100' to 150' and expands the time for canvassing vote-by-mail (VBM) ballots from 22 days to 35-40 days depending when early voting begins in the county.
- Prohibits a county, municipal, or state agency from sending a voter a VBM ballot unless a voter has requested a ballot. The prohibition does not apply to disabled voters, overseas voters or local referenda.
- Drop boxes located at early voting sites may be used only during early voting hours and must be monitored-in person by an employee of the supervisor of elections.



Construction Permits (HB 1059)

- The bill sets timeframes for reviews of additional information requested by a county or municipality from a building permit applicant.
- Requires local government to post on its website each type of building permit application and all required attachments; procedures for processing, reviewing, approving applications; and the status of each application.
- Local governments must allow electronic submission of all applications, attachments and payments.
- If a local government fails to meet established deadlines for reviewing and issuing a building permit for a single-family residential dwelling , it must reduce the original permit fee by 10% for each day its late.
- Requires the local government to provide notice of the reason(s) why the permit application fails to meet the FBC or the agency's laws and provide the applicant 10 business days to correct the application. If corrected and submitted within 10 business days, local government must approve or deny the application within 10 business days; if not, the local government must reduce the original permit fee by 20% for the first day, and 10% for each additional day late afterwards up to 5 business days.

COMMUNITY & URBAN AFFAIRS



Building Inspections (HB 667)

- The bill requires local enforcement agencies to allow requests for building code inspections to be submitted electronically.
- Accepted methods of electronic submission include but are not limited to: E-mail; Electronic fill-in form available on the building department's website or a third-party submission management software; or an application that can be downloaded on a mobile device.
- The bill also provides that a local enforcement agency must refund 10 percent of the permit and inspection fees, if the inspector or building official determines the work, which requires the permit, fails an inspection; and the inspector or building official fails to provide a reason that is based on compliance with the Florida Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 5 business days of the inspection.
- The bill authorizes a state or local enforcement agency to perform virtual inspections, except structural inspections on a threshold building, and defines "virtual inspection" to mean a form of visual inspection using visual or electronic aids to allow a building code administrator, inspector, or team of inspectors, to perform an inspection without being physically present at the job site.



Growth Management (HB 59)

- Requires a local government to include a private property rights element in its comprehensive plan the earlier of its next proposed plan amendment initiated after July 1, 2021, or its next scheduled evaluation and appraisal report.
- Allows parties to a development agreement to amend or cancel the agreement without the consent of all owners whose property originally subject to the agreement, unless the amendment or cancellation would directly modify the allowable uses or entitlements of those property owners.
- Specifies that development agreements for a DRI entered on or before April 6, 2018, previously classified as "essentially built out" may be amended using a local government's processes for amending development orders; and the DRI developer may exchange land uses if the exchange will not increase impacts to existing public facilities.
- Requires FDOT, when selling property, to provide a right of first refusal to the property's prior owner and establishes a process for implementing that right of first refusal.

COMMUNITY & URBAN AFFAIRS



Florida Building Code (HB 401)

- Amends the Florida Building Codes Act, adding several new provisions.
- Allows a substantially affected person to petition the Florida Building Commission (FBC) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Building Code and establishes a process for such petitions.
- Prohibits a municipality, county, or special district from using preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.
- Authorizes the FBC to issue an “errata to the code” to list demonstrated errors in the Building Code if the determination of errors and issuance of an errata code is approved by a 75 percent supermajority vote of the Commission.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition of applying for, or obtaining, a building permit.

COMMUNITY & URBAN AFFAIRS



Florida Building Code (HB 401) – Cont.

- Makes several changes to current law pertaining to private building inspectors, known as “private providers,” by:
 - Expressly authorizing private providers to conduct virtual building inspections.
 - Allowing private providers to submit various inspection forms, records, and reports electronically to local building departments and utilize electronic signatures.
 - Allowing private providers to conduct “single-trade inspections,” as defined in the bill.
 - Creating a “qualified private provider” registration process and providing that a qualified private provider, as defined in the bill, does not need to include information other than the services to be performed in its written notice to the local building official that a private provider has been contracted to perform inspections.
 - Authorizing a private provider to conduct emergency inspection services without first notifying the local building official.



Florida Building Code (HB 401) – Cont.

- Requires that when an owner or contractor retains a private provider to perform plan reviews or building inspection services a local enforcement agency must reduce its permit fee by the amount of costs savings realized for not having to perform such services.
- The reduction may be calculated as a flat fee, on a percentage basis, or any other reasonable basis by which the local enforcement agency assesses the costs for plans review or building inspection services.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.
- A local government may use excess funds generated by building code enforcement for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners. However, a local government using excess funds to construct a building or structure must designate the funds for that purpose and may not carry forward the funds for more than four consecutive years.

COMMUNITY & URBAN AFFAIRS



Florida Building Code (HB 401) – Cont.

- Prohibits local governments from regulating specific “building design elements” for single-family or two-family residential dwellings, with certain exceptions including:
 - Dwellings on the National Register of Historic Places or located in a historic district.
 - Regulations adopted to implement the National Flood Insurance Program.
 - Regulations adopted to comply with Chapter 553.
 - Dwellings located in a community redevelopment area.
 - Regulations required to ensure protection of coastal wildlife in compliance with current law.
 - Dwellings located within a planned unit development or master planned community created by ordinance, resolution, or other final action of the local governing body.
 - Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.
- Defines the term "building design elements" and the term "planned unit development" or "master planned community."
- Does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

COMMUNITY & URBAN AFFAIRS



Tolling & Extension of Permits During States of Emergency (SB 912)

- Expands current law provisions that authorize extensions of development orders, building permits and environmental resource permits during a state of emergency issued by the Governor for a natural emergency. The period to exercise such rights is tolled during the state of emergency plus an additional six months.
- Adds consumptive use permits (for land subject to a development agreement in which the permittee and the developer are the same entity), development permits, and development agreements as permits and authorizations subject to tolling and extension.
- Applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 2020 (e.g., COVID-19 pandemic).
- Preserves enterprise zone boundaries in existence before December 2015, for the purpose of allowing local governments to administer local incentive programs within those boundaries through December 31, 2021.



Additional Resources

FAC Policy Action Center

<https://www.fl-counties.com/policy-action-center-0>

House of Representatives 2021 Session Summary

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Session&Committeeld=&Session=2021&DocumentType=End%20of%20Session%20Summaries&FileName=2021%20EOS.pdf>

Senate End-of-Session Summaries

<https://flsenate.gov/Committees/BillSummaries/2021/>



**PUBLIC
POLICY**



Questions?

Contact information:

Eddy Labrador, Senior Legislative Counsel

Cell: (954) 826-1155 or Email: elabrador@fl-counties.com