

Florida Association of County Attorneys 2020 Continuing Legal Education Program June 10-11, 2020

Wednesday, June 10, 2020

12:30 p.m.

Introduction of FACA President & Announcement of President's Award Recipient Mark Lapp, FACA Immediate Past President

Opening Remarks

Alison Rogers, FACA President Escambia County Attorney

https://webinar.anymeeting.com/668-580-097

12:45 p.m. to 1:30 p.m. Things that Move: Micromobility Devices, Golf Carts and

the State of the Law

Justin E. Caron, Assistant County Attorney

Osceola County &

Ashley Scott, Global Regulatory/Policy Counsel

Lime

https://webinar.anymeeting.com/884-213-016

Questions can be asked through the talk box located at the top of your screen or by emailing eanderson@flcounties.com

1:45 p.m. to 2:30 p.m. Emotional IQ and Resiliency

Rebecca Bandy, Director

Henry Latimer Center for Professionalism

The Florida Bar

https://webinar.anymeeting.com/658-220-392

Questions can be asked through the talk box located at the top of

your screen or by emailing eanderson@flcounties.com

2:45 p.m. to 3:30 p.m. Pandemic Survival 101: A Panel Presentation

Dylan Reingold, County Attorney, Indian River County

Sarah Woods, County Attorney, Martin County

Patrick McCormack, County Attorney, St. Johns County

https://webinar.anymeeting.com/119-885-214

Questions can be asked through the talk box located at the top of

your screen or by emailing eanderson@flcounties.com

2.45 nm to 2.20 nm

3:45 p.m. to 4:30 p.m.

State Preemption of Land Use Regulation Heath Stokley, Esq. Carly Schrader, Esq, Nabors, Giblin & Nickerson

https://webinar.anymeeting.com/202-394-991

Questions can be asked through the talk box located at the top of your screen or by emailing eanderson@flcounties.com

4:45 p.m. to 5:30 p.m.

Cybersecurity, Hacking and Ransomwear What Every Local Government Needs to Know Jim Rogers Kevin Schmidt ARGO Cyber Systems, LLC

https://webinar.anymeeting.com/837-758-662

Questions can be asked through the talk box located at the top of your screen or by emailing eanderson@flcounties.com

5:30 p.m.

Afternoon Announcements
Alison Rogers, FACA President
Escambia County Attorney



Florida Association of County Attorneys 2020 Continuing Legal Education Program June 10-11, 2020

Thursday, June 11, 2020

9:00 a.m. *Morning Welcome Remarks*

Alison Rogers, FACA President

9:00 a.m. to 9:45 a.m. Shaming and Defaming: When the Public Attacks County Employees

Kerry Parsons, Esq, Valerie Vicente, Esq,

Nabors, Giblin & Nickerson

https://webinar.anymeeting.com/369-969-411

Questions can be asked through the talk box located at the top of

your screen or by emailing ksapp@flcounties.com

10:00 a.m. to 10:45 a.m. Bridgegate and Beyond: The State of Public Corruption

Nikki Day, Esq.

Bryant, Miller & Olive, P.A.

https://webinar.anymeeting.com/986-570-985

Questions can be asked through the talk box located at the top of

your screen or by emailing ksapp@flcounties.com

11:00 a.m. to 11:45 a.m. 2020 Legislative Session Briefing

Laura Youmans, Legislative Counsel Florida Association of Counties

https://webinar.anymeeting.com/806-133-885

Questions can be asked through the talk box located at the top of

your screen or by emailing ksapp@flcounties.com

12:00 p.m. to 12:45 p.m. Redistricting Commission Districts in 2021: The 2020 Census Effect

Kurt Spitzer, President Kurt Spitzer & Associates

https://webinar.anymeeting.com/557-511-344

Questions can be asked through the talk box located at the top of

your screen or by emailing ksapp@flcounties.com

12:45 p.m. to 1:30 p.m. FACA Awards Announcement & Lunch Break

1:30 p.m. to 2:30 p.m.

The 2020 Election: Security/Canvassing Board

David Stafford

Escambia County Supervisor of Elections

Matthew V. Masterson, Senior Cybersecurity Advisor

Department of Homeland Security

Cybersecurity & Infrastructure Security Agency (CISA)

https://webinar.anymeeting.com/125-938-638

Questions can be asked through the talk box located at the top of

your screen or by emailing ksapp@flcounties.com

2:45 p.m. to 3:30 p.m.

The ABC's of Collective Bargaining Cynthia Hall, Assistant County Attorney Monroe County Attorney's Office

https://webinar.anymeeting.com/590-404-963

Questions can be asked through the talk box located at the top of your screen or by emailing ksapp@flcounties.com

3:45 p.m. to 4:30 p.m.

The Ins and Outs of Muncipal Bonds Kareem J. Spratling, Esq. Rhonda D. Bond-Collins, Esq. Bryant, Miller & Olive, P.A.

https://webinar.anymeeting.com/934-193-857

Questions can be asked through the talk box located at the top of your screen or by emailing ksapp@flcounties.com

4:30 p.m.

Closing Remarks

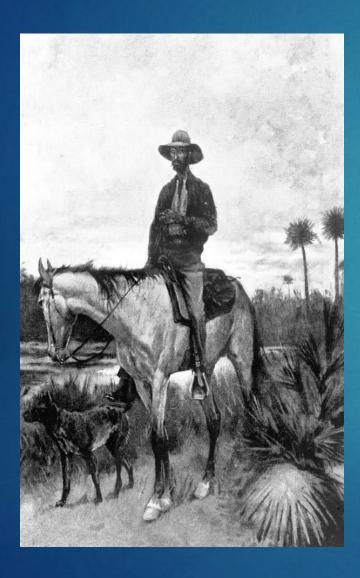
Things That Move:
Micromobility Devices,
Golf Carts and the
State of the Law

JUSTIN E. CARON
OSCEOLA COUNTY

This presentation will focus on the growing area of micromobility devices including rental scooters and golf carts in urban areas.

Discussion will focus on the current state and local regulations of these devices, how different communities are addressing usage and where the State of the Law appears to be headed.

How Do We Get There?





Smithsonian



Florida Then





City Data



Florida Now



Visit Orlando





Golf Carts

Viera, Florida



Florida Today

The Villages



Village News

What is a golf cart?

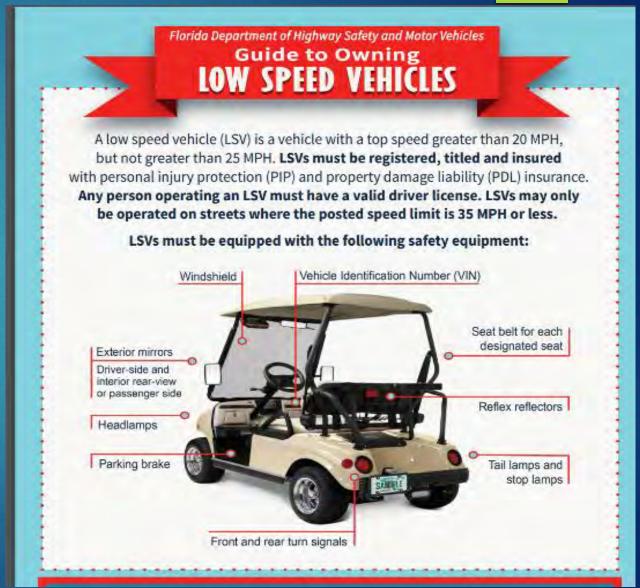
- Golf Carts were first invented in the 1930's but started gaining popularity in the 1950's.
- In the 1970's golf carts used off the golf course in small communities or islands where car travel was ineffective.
- Florida Statutes Chapter 320

A motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

What is a Low Speed Vehicle

Florida Statutes Chapter 320
Any four-wheeled vehicle
whose top speed is greater
than 20 miles per hour but not
greater than 25 miles per hour,
including, but not limited to,
neighborhood electric vehicles.

Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122.



Seeing more "golf carts" on your commute?

Two types of vehicles and two sets of rules

Golf Carts and Low Speed Vehicles – both defined by Chapter 320, Florida Statutes. Golf cart specifics can be found in area of F.S. 316.212.

Golf Carts	Low Speed Vehicles
Defined as not being able to exceed 20 mph	Defined as being able to go between 20 and 25 mph
Age requirement - 14 and older	Must have a valid license to drive
Not required to be titled, registered or have an insured driver	Must be registered, titled and insured
Can only operate on roadways that are designated by local government on roads that are 30 mph or less	Can operate on roadways marked 35 mph or less and no government designation needed

How can a County designate a roadway for golf cart use?

- Prior to making such a designation, the county must first determine that golf carts may safely travel on or cross the public road or street, considering factors including the speed, volume, and character of motor vehicle traffic using the road or street.
- Relevant Questions:
- How does the County determine safety? A formal study? And through which department?
- Should policies be adopted so that there is uniformity in the determination?
- Should we create an application?
- How should we adopt the designation by ordinance or by resolution?

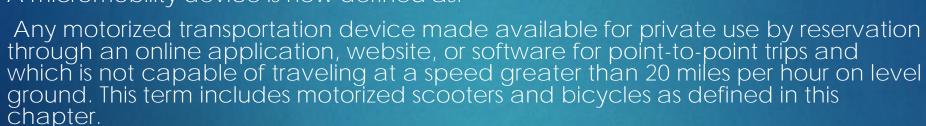
- How Osceola County did it
- By ordinance harder to change but less enforcement and due process issues
- Creation of Golf Cart Road Designation Policy assigned to the Transportation Department
- Golf Cart Warrant studies county required reimbursement for studies
- Mandatory installation of signage county required reimbursement for signage, as well
- Additional requirements that drivers of golf carts have a license (so over 14) and insurance (F.S. 316.212(8)(a)

- Special considerations:
- Extra authorized uses for municipalities under F.S. 316.2126
- Special rules for driving on sidewalks
- Statute that specifically addresses retirement communities and golf cart operation – F.S. 316.2125
- Different rules for motorized scooters

What is a Scooter?

Laws of Florida 2019-109

A micromobility device is now defined as:



A motorized scooter is now defined as: Any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.

Growing popularity in urban areas for the "last mile commute"



Scooters in Florida

- What's the gist?
- Micromobility device operators now have the same rights and duties as bicyclists, which means no more than one rider per device, passengers under 16 must wear a helmet, must follow traffic signals, etc.
- They are not required to be registered or insured. A person does not have to have a driver's license to operate them.
- Vendors are required to secure all devices during tropical storms or hurricanes.
- Finally, a local government may adopt an ordinance governing the operation of micromobility devices on streets, highways, sidewalks, and sidewalk areas in the local government's jurisdiction.
- SO, if you adopt NOTHING they are allowed to operate freely.

What can local governments do?

▶ 316.2128 F.S. allows local governments to regulate pursuant to 316.008 F.S.

Case Studies

- Some counties have adopted ordinance models where only a certain number of permit holders may operate.
- Some jurisdictions have started Pilot Programs where potential operators must attend a pre-app meeting and receive a permit to operate (Chapter 10 of City of Orlando Code).
- Docking Stations

Fort Lauderdale

Adopted an ordinance allowing scooters in 2018, amended in 2020.

Maximum of three permits issued, up to 500 scooters per permit

Permit applications ranked and awarded based on:

- -Experience
- -Technology
- -Community Engagement
- -Safety
- -Operational Plan



Insurance?

Panama City Beach

- Some jurisdictions have banned scooters
- Classy Cycles, Inc. v. Pan. City Beach, 44 Fla. L. Weekly D2729 (Fla. 1st DCA November 13, 2019)
- Dissent

Now on appeal to the Florida Supreme Court

Los Angeles



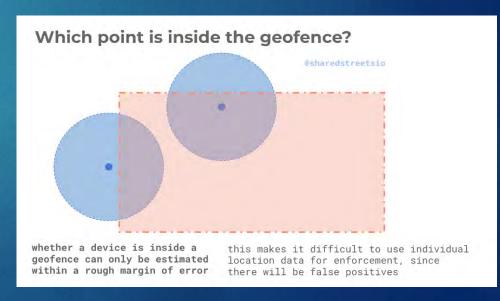


LA Times

LA Curbed

Geofencing

- A geofence is a virtual perimeter for a real-world geographic area. It can be dynamically generated in a radius around some point location. A geofencing involves a location-aware device of a location-based service (LBS) user entering or exiting a geofence.
- This information can be used to lower a scooters speed, stop a scooter from entering a certain area, or prohibit a user from abandoning a scooter.
- How geofencing is being used by local governments in Florida.



Language from Coruscate Medium.com

Final Issues

- ▶ Who collects them?
- Dock vs. Dockless
- Geofencing
- ► Liability concerns?
- ▶ Is a preemption coming?



Where are they going?

- Florida Legislature addressed the growing field in 2019
- Major cities in Florida lack a strong public transportations system found in other Metros
- As cities urbanize, solutions to the last mile commute will become more important
- Tourism
- Local governments will need to work out what is best for their community
- Views may be changing



Golf cart protests intensify in the Villages, as one anti-Trump Florida ma receives threat

Posted By Solomon Gustavo on Fri, Jan 31, 2020 at 10:31 am



Florida man arrested in golf cart with 5 bottles of Fireball





Florida man carjacks golf cart, drives off and into ditch, is arrested, SJSO says

Suspect attempted escape, putting head into fence







You may also like



WATCH: Deputies say Florida man stole golf cart in slow getaway attempt



Florida man arrested for cutting electric scooter brakes







By ABC7 Staff | September 12, 2019 at 3:29 PM EDT - Updated September 12 at 3:29 PM AARTIN COUNTY Ele (WWSB) - A Florida man came out of n

P Type here to search

① 2 October 2019

Share

Florida Association of County Attorneys 2020 CLE Program

E- Scooters are Coming to Town Here!

Ashley Scott, Senior Regulatory and Policy Counsel, Lime



Session Overview

This presentation will discuss the role of the local government attorney in negotiating with micromobility operators and will explore different approaches a local government can take to working with e -scooter companies. Issues to be discussed include: matching fleet size and increases to demand, vehicle parking, safety, equity, indemnification, accessibility and ADA issues, insurance, user agreements, rider etiquette, data use, reporting, collaboration and coordination, and the interrelationship of neighboring universities and cities.



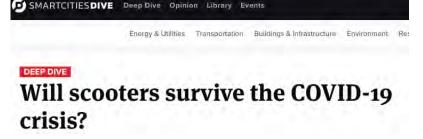


Connect and Urban Living Through Mobility





March 2020



April 2020

"...your mobility business is a critical part of Austin's transportation network and necessary for many people who need to get to and from their medical appointments, grocery shopping, prescription pick ups, and other necessary appointments, and I wanted to ensure you were all aware that you are not prohibited in any way from providing these essential transportation options to the people of Austin."

Jacob Cullerson, Mobility Services Division City of Austin

May 2020



E-bikes and e-scooters are set to play a key role in easing the UK out of lockdown

PUBLISHED WED, MAY 13 2020-12:00 AM EDT | UPDATED WED, MAY 13 2020-3:55 AM EDT







Cities are expanding bike lane infrastructure

Pandemic may bring a boom in cycling as major cities add many miles of bike lanes

Hundreds of Cities Worldwide Make Streets into Cycling and Pedestrian Walkways—With Plans to Stay That Way

European cities expand bike lanes before lockdowns end

How Montreal, Milan, and D.C. have made more space for walk/bike/transit during COVID

Key Policy Issues Discussion

- Applicable state laws (e.g. helmet, speed, etc.)
- Safety
- Indemnity/Liability
- Equity/underserved communities
- Quality of operators
- Fleet Size
- Data sharing requirements
- Accessibility
- Consistency with other key City objectives
- Fees cost recovery and/or revenue generation
- Flexibility for future technology advancements



Lime People Value Bikes and Scooters; Scooters More Economically Viable

E- Bikes

Ideal Trip Range	2 - 3 Miles	1- 2 Miles
% of Car Trips Replaceable (Inrix)	12%	36%
Hardware Cost	\$1000	\$500
Rider Popularity	6.5 Million Trips Annually	38.5 Million Trips Annually
Avg. Trips Per Vehicle Per Day	1	3
Avg. Profit Per Vehicle Per Day	-\$10.00 (Jump) -\$3.00 (Lime)	\$1.00

E-Scooters



Denver's Cross - Subsidization Model Recognizes this Reality

Denver: Mobility



E-Bikes Subsidized by E- Scooters



Transportation



Transit Subsidized by Toll Roads



Infrastructure



Road Building Subsidized by Gas Taxes



Education



Schools Subsidized by State Lotteries



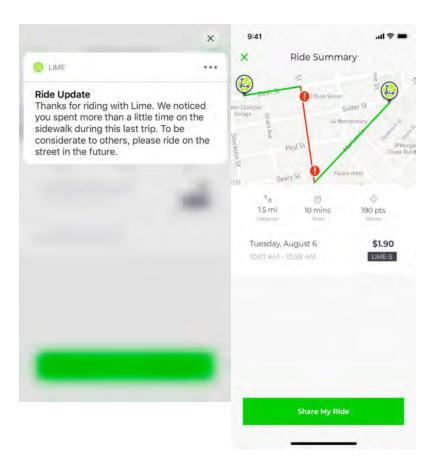


How to create a safe micromobility service

- Requiring in -app tutorials for first time riders, hosting local "First Ride" events and encouraging helmet usage.
- Designing shared scooters for safety complemented with testing and ongoing maintenance. Lime owns design, manufacturing, testing, operations, and maintenance.
- Collaborating with local policymakers to develop a framework that promotes safe and reliable service.



Sidewalk Riding Technology



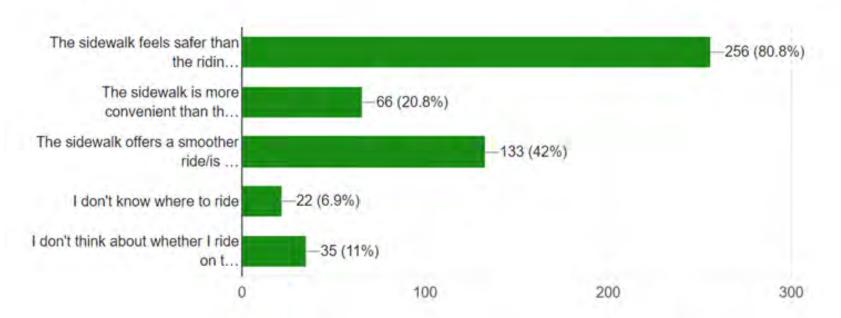
- → The vibration of the underlying riding surface (e.g. a road or a sidewalk) can be detected. We have built a sophisticated statistical model (AI) for determining the road surface using this accelerometer vibration data.
- → The model is able to discern with up to 95% confidence when a rider is riding on a sidewalk for more than 50% of their ride instead of a street surface.
- → The goal is to change rider behavior and to give New Orleans, insight into where riders are riding on the sidewalk and where you should be investing your limited infrastructure funding. We also use the information to educate our users on safe riding.



People are riding on the sidewalk for a reason

If you primarily ride on the sidewalk, please select the contributing factors (select up to 2)

317 responses



Ensuring Equity and Serving More Communities

- Defining a service area to meaningfully serve various parts of the community.
- Optimizing fleet size to ensure scooter supply meets demand.
- Meaningful community engagement that builds trust and learns how to best serve the community.
- Engaging important non rider stakeholders.



Takeaway

Cities & Operators share many common goals.

Affordable and greener transportation options that reduce congestion and drives equity

- Open communication among all operators and the City during the drafting process and after permits are issued
- 1. Operators must be a credible source of information on industry, the regulatory landscape and best practices
- Clear and transparent policy principles and goals in formulating regulation during the drafting process to ensure positive outcomes for residents

Contact info

Ashley Scott: Ashley.Scott@li.me



Rebecca J. Bandy, Director

How are you feeling right now?

Journal Prompt

"Be where you are; otherwise you will miss your life."

BUDDHA





BE PRESENT



- Do not think about the past or the future. Be here and now.
- When in a meeting, deposition, or in court be there only.
- When eating, just eat.
- Tour your office for 15 minutes.
- People-watch outside of the office to build empathy.
- Carve out moments in your every day to unplug and be stimulus-free.

On your death bed, your grandchild comes to you and asks what you did to change the world. What will you say?

Journal

Do You Know Your

Purpose?

"My mission survive, t so with passion some compassion, some humor, ånd some style."

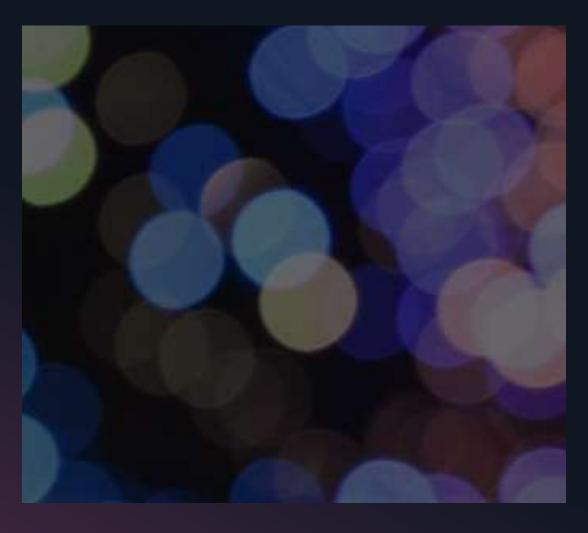
-Maya Angelou

List three things you are grateful for right now and why.

Journal



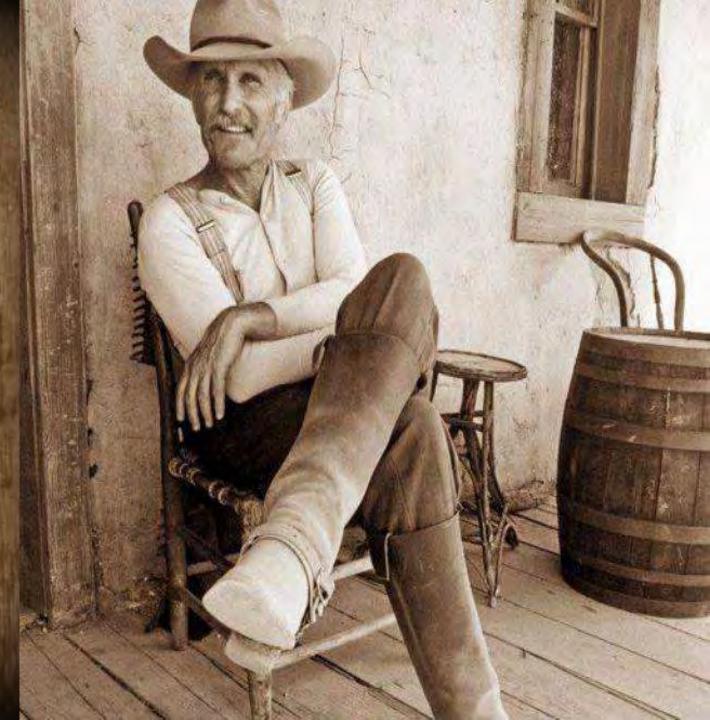
Benefits of Gratitude

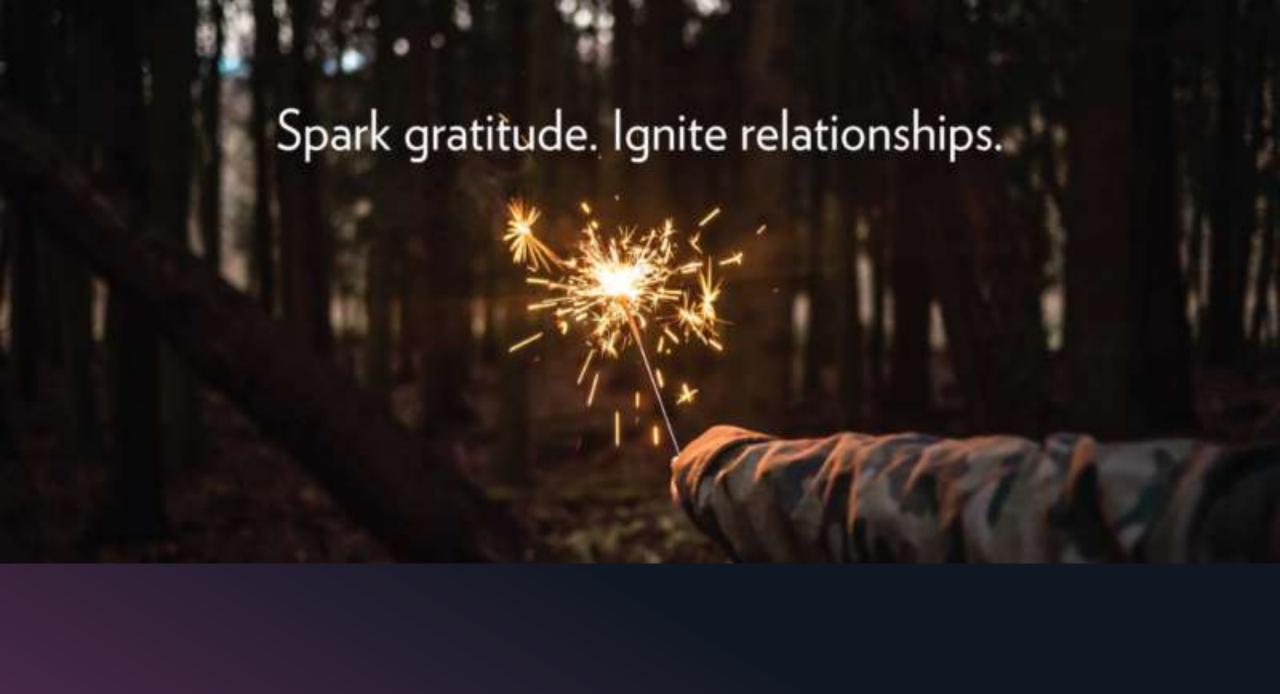


- 1. Gratitude improves relationships, and social connection is one of the greatest predictors of happiness.
- 2. Gratitude can improve sleep. "Count blessings, not sheep."
- 3. Gratitude improves self-care.
- 4. Gratitude can help with impulse-control, such as with over-eating.
- 5. Gratitude can ease depression.
- 6. Gratitude enhances empathy and reduces aggression.
- Gratitude improves self-esteem and reduces social comparisons.
- 8. Gratitude reduces stress and may play a role in reducing trauma.



"If you want one thing too much it's likely to be a disappointment. The healthy way is to jearn to like the everyday things, like soft beds and buttermik-and feisty gentiemen." arry McMurtry, Lonesome Dove





State Preemption of Land Use Regulation

CARLY J. SCHRADER, ESQ. HEATH R. STOKLEY, ESQ.

NABORS, GIBLIN, & NICKERSON, PA TALLAHASSEE, FLORIDA

OVERVIEW OF PRESENTATION

- Legal Background
- Policy Considerations and Recent Trends in State Legislation
- Florida Statutory Land Use Regulation Preemptions: Specific Examples
- Practical Considerations



PRE 1968 FLORIDA CONSTITUTION

- Requirement of express legislative grant
- No specific statewide authority for Florida counties to engage in planning and zoning
- Thousands of special acts dictated County authority, including in zoning context



EXAMPLE OF GRANT OF ZONING AUTHORITY: CH. 24663, LAWS OF FLA. (1947) (LEON COUNTY)

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

Section 1. GRANT OF POWER-For the purpose of promoting health, safety, morals, or the general welfare of the community, the Board of County Commissioners of Leon County, Florida, is hereby empowered within all that certain territory in said County of Leon, within five (5) miles of the City Limits of the City of Tallahassee, Florida, but not including the territrry comprising said City, and also all that certain territory in said County of Leon not included within any municipality and more than five miles from the City Limits of said City of Tallahassee, within one thousand (1000) feet of the center line of any of the following public roads: State Roads numbered 10, 20 50, 59, 61, 63, 71, 94, 107, 155, 284, 365, 373, the Old St. Augustine Road and the Centerville Road, to regulate and restrict the height, number of stories, and size of buildings and other structures on land and water, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, the use of buildings, structures and land for trade, industry, residence or other specific use; to adopt a safety and sanitary code or codes regulating plumbing and electrical installations and other matters proper to be regulated to safeguard the safety, health and welfare of the people.



1968 FLORIDA CONSTITUTION

Article VIII, sections I(f), (g), Florida Constitution

Establishment of Home Rule

Counties may legislate by Ordinance for any public purpose, unless there is an inconsistent law or charter limitation.



HOME RULE IN CONTEXT OF PLANNING AND ZONING

Specific Enumerated Powers include to the extent not inconsistent with general or special law:

- (g) Prepare and enforce comprehensive plans for the development of the county.
- (h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- § 125.01, Fla. Stat.



Two ways a County Ordinance can be inconsistent with State Law:

- (I) A County cannot legislate in a field if the subject area has been preempted to the State
- (2) A County cannot enact an ordinance that directly conflicts with State statute.

Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309, 314 (Fla. 2008)



Express Preemption

- Specific and clear legislative statement—cannot be implied or inferred
- Issue frequently is whether express preemption is broad enough to encompass action under review
- Recent examples where an express preemption applied:

Classy Cycles Inc. v. Bay County, 201 So. 3d 779 (Fla. 1st DCA 2016).

Orange County v. Singh, 268 So. 3d 668 (Fla. 2019).

Fla. Retail Fed'n, Inc. v. City of Coral Gables, 282 So. 3d 889 (Fla. 3d DCA 2019).



Implied Preemption

Courts will only imply preemption where:

- the legislative scheme is pervasive and
- the local legislation would present danger of conflict or there are strong public policy reasons for finding the area preempted to the Legislature.

Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880 (Fla. 2010)

Phantom of Clearwater, Inc. v. Pinellas County, 894 So. 2d 1011 (Fla. 2d DCA 2005)



Conflict

- In a field where both the State and the local government can legislate concurrently, a County cannot enact an ordinance that directly conflicts with a State statute.
- Conflict occurs when the local ordinance cannot coexist with the State statute.

Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309, 314 (Fla. 2008)



GENERAL STATE OVERSIGHT IN GROWTH MANAGEMENT

1970s and 1980s: Increased State Oversight:

Florida State Comprehensive Planning Act of 1972. Ch. 72-295, Laws of Fla.

Local Government Comprehensive Planning Act. Ch. 75-257, Laws of Fla.

Growth Management Act. Ch. 85-55, Laws of Fla. (as amended)

Compare to 2011: Reduction of State Oversight:

Community Planning Act, Ch. 2011-139, Laws of Fla. (as amended)

Requires (among others):

Compliance with adopted comprehensive plan, § 163.3194(1)(a), Fla. Stat.

Concurrency for sanitary sewer, solid waste, drainage, and potable water on statewide basis, § 163.3180, Fla. Stat.



- Residential/Housing
 - Family day care homes (§§ 125.0109, 166.0445, Fla. Stat.)
 - Community residential homes (§ 419.001, Fla. Stat.)
 - Mobile and manufactured homes; mobile home parks (§§ 320.8285(6), 553.38, 723.004(2), Fla. Stat.)
 - Vacation rentals (§ 509.032(7)(b), Fla. Stat.)
 - Tree pruning, trimming, and removal (§ 163.045, Fla. Stat.)
 - Vegetable gardens (§ 604.71, Fla. Stat.)



- Agricultural
 - Agritourism (§§ 570.85-570.87, Fla. Stat.)
 - Farm Worker Housing (§ 381.00896, Fla. Stat.)
 - Honey Bees (§ 586.10, Fla. Stat.)
 - Nonresidential farm buildings/signs (§ 604.50, Fla. Stat.)
 - Pesticides (§ 487.05 I, Fla. Stat.)
 - Farm Operation/Right to Farm Act (§§ 163.3162, 823.14(6), Fla. Stat.)



- Utilities/Infrastructure
 - Electric Power Plants (§ 403.510, Fla. Stat.)
 - Electric and gas utilities (rates and services) (§ 366.04(1), Fla. Stat.)
 - Certification and regulation of natural gas transmission pipelines and corridors (§ 403.942(2), Fla. Stat).
 - Wireless Communications Facilities (§ 365.172(13)(b), Fla. Stat.)
 - Small Wireless Facilities (§ 337.40 I (7)(b), Fla. Stat.)
 - Underground petroleum storage tanks (§ 376.317, Fla. Stat.)
 - Vegetation maintenance and tree pruning or trimming within right-of-way for electric transmission or distribution line (§ 163.3209, Fla. Stat.)
 - Water and wastewater utilities (authority, service and rates) (§ 367.011, Fla. Stat.)



- Environmental
 - Consumptive use of water (§ 373.217(4), Fla. Stat.)
 - Mangrove Trimming and Preservation Act (§ 403.9321-403.9333, Fla. Stat.)
 - Plastic bags and other "auxiliary containers" (§ 403.7033, Fla. Stat.)
 - Polystyrene Products (Styrofoam) (§ 500.90, Fla. Stat.)
 - Regulation of waters (except water quality) (§ 373.023(2), Fla. Stat.)



EXAMPLES OF RANGE OF PREEMPTIONS

- Miscellaneous:
 - Construction materials, use of explosives, mining activities (§ 552.30, Fla. Stat.)
 - Sale of malt beverages (§ 563.02(1)(a), Fla. Stat.)
 - Medical Marijuana Treatment Center Dispensing Facilities (§ 381.986(11), Fla. Stat.)
 - RV Parks (§§ 513.051, 513.1115, Fla. Stat.)
 - Shopping Carts (§ 506.5131, Fla. Stat.)



EXAMPLES FROM 2020 LEGISLATIVE SESSION

Passed (Not Yet Signed by Governor as of May 29, 2020)

Growth Management, SB 410

Environmental Rights Preemption, SB 712

Over-the-Counter Proprietary Drugs and Cosmetics (sunscreen), SB 172

Deregulation of Professions (food trucks), HB 1193

Failed

Amendment to Vacation Rental Preemption, HB 1011/SB 1128

Home Based Business, HB 537

Recreational Vehicle Parks, HB 647/SB 772

Local Pet Store Regulations, SB 1237/1698



STATE STATUTORY PREEMPTION IN LAND USE: POLICY

Policy Rationale in Support of Statutory Preemption:

- Need for uniformity or to address important state interest
- Remedy issues such as exclusionary zoning
- Specific division between state and local regulation or responsibility

Policy Rationale in Support of Allowing Local Regulation:

- Local regulation can be tailored to meet individual needs of the community, and based on knowledge of local conditions
- Allows local authority to act in areas where the State has failed to take action
- Allows for policy innovation (experimentation)



EXAMPLES OF RECENT PREEMPTION TRENDS

Identified Similarities in Recent Legislation

- De-regulation or Anti-Regulation in whole or in part of specific subjects
- Attempts to block local policy initiatives
- Impose Punitive Measures on Local Governments (examples include attorneys fees, personal liability)

Richard C. Schragger, The Attack on American Cities 96 Tex. L. Rev. 1163 (May 2018)

Richard Briffault Essay: The Challenge of the New Preemption 70 Stan L. Rev. 1997 (June 2018)

Erin Adele Scharff, Hyper Preemption: A Reordering of the State-Local Relationship? 106 Geo. L.J. 1469 (June 2018)



Legislative History

- 2011: Originally passed as very broad preemption (Ch. 2011-119, Laws of Fla.; HB 883):
 Local law, ordinance or regulation may not restrict the use of vacation rentals, prohibit vacation
 rentals, or regulate vacation rentals based solely on their classification, use or occupancy.
- 2014: Amended, as a more limited preemption (Ch. 2014-71, Laws of Fla.; SB 356):
 A local law, ordinance or regulation <u>may not prohibit</u> vacation rentals, <u>or regulate duration or frequency</u> of rental of vacation rentals.
- Unsuccessful attempts to again broaden the preemption include: 2017 (HB 425); 2018 (HB 773/SB 1400); 2019 (HB 987/SB 824); and 2020 (HB 1011/SB 1128).



Current Status pursuant to COVID-19 Emergency (as of May 29, 2020)

- Executive Order 20-123, Section 4: Counties may seek approval to operate vacation rentals with a written request from the County Administrator and the county's safety plan for vacation rental operations submitted to DBPR Secretary. DBPR will post and update guidance on its website.
- Current information available at: http://www.myfloridalicense.com/DBPR/vacation-rental-status/



Judicial Review of Regulations Adopted After 2014 Legislative Change:

Flagler County: http://www.flaglercounty.org/short_term_vacation_rentals/index.php#

Nabors

- Ordinance requires installation of certain safety devices and establishes maximum occupancy limits. On order on a preliminary injunction, circuit court determined the ordinance was not preempted by state law. 30 Cinnamon Beach Way LLC v. Flagler County, 2015 CA 167 (Fla. 7th Jud. Cir., Order on preliminary injunction, June 1, 2015), aff'd 183 So. 3d 373 (Fla. 5th DCA 2016).
- <u>City of Anna Maria</u>:
 http://www.cityofannamaria.com/residents/vacation_rental_rules_and_regulations/index.php
 - In challenge brought to maximum occupancy limits for vacation rental units in the City of Anna Maria, the circuit court determined that the limitation does not impinge on the regulatory subjects of frequency or duration of rentals. Fla. Gulf Coast Vacation Homes, LLC v. City of Anna Maria, 2016-CA-629 (Fla. 12th Cir. Ct. April 11, 2016).

Practical Issues as to Interpretation:

- Application to regulations existing prior to June 1, 2011
 - City of Miami v. Airbnb, Inc., 260 So. 3d 478 (Fla. 3d DCA 2018) (rejecting temporary injunction as overly broad and determining that a zoning regulation existing prior to 2011 limiting use to "predominantly of permanent housing" may prohibit short term or vacation rentals "under certain circumstances," such as property owned by investors used solely for a vacation rental)
 - Fla. AGO 2019-07 (regulations existing prior to June 1, 2011, changed to be less restrictive)
 - Hostetter v. Escambia County, Case No. 2015-CA-1383 (1st Jud. Cir. Escambia County, Dec. 16, 2015) (where County amended zoning code to reclassify property from R-2 to MDR in 2015, both of which prohibited vacation rentals, court determined that 2015 change was preempted in so far as it prohibited vacation rentals)



Practical Issues as to Interpretation:

- Is the local ordinance a prohibition?
 - Fla.AGO 2014-09 (City cannot attempt to prohibit vacation rentals where residences are otherwise allowed; otherwise government would exceed its regulatory authority)
 - Fla.AGO 2016-12 (distance separation requirement)
- Can a local authority regulate use of a vacation rental as a wedding venue?
 - Bennett v. Walton County, 174 So. 3d 386 (Fla. 1st DCA 2015)
 - Khoyi v. Hillsborough County 26 Fla. L. Weekly Supp. 554a (Fla. 13th Jud. Cir. Aug. 28, 2018)
- Other interpretation issues: Fla.AGO 2018-06 (application to accessory structure)



§ 570.85. Agritourism

Statutory Intent

"...to promote agritourism as a way to support bona fide agricultural production by providing a secondary stream of revenue and by educating the general public about the agricultural industry. It is also the intent of the Legislature to eliminate duplication of regulatory authority over agritourism as expressed in this section." (Emphasis supplied)

Express Preemptive Language

"Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461. This subsection does not limit the powers and duties of a local government to address substantial offsite impacts of agritourism activities or an emergency as provided in chapter 252." (Emphasis supplied)



What is "Agritourism Activity"?

§ 570.86(1)-Definition

any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions.

agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public.



How Broadly Does the Preemption Apply?

- Currently very little interpretive case law, or other authority regarding uses that can be considered Agritourism.
- Ag landowners and trade groups take an expansive view. For example, the website for FLORIDA AGRITOURISM ASSOCATION --https://visitfloridafarms.com/operators/fatatourism-guide/, provides specific examples:



Overnight Lodging*



Bed and Breakfasts



Ranch-style lodging



Farm house stays



RV sites/camp sites



Camps



Equine shipping layovers with stalls and/or paddocks



Recreational Activities or Tours

- Fishing/fishing leases
- Hunting/hunting leases
- Citrus grove tours
- Alligator farming
- Equitourism
- Barn tours
- Horseback riding
- Vineyards/wineries
- Shooting skeet
- Cattle-related activities such as drives, roping, etc.
- Crop harvesting
- Pick your own citrus, melons, berries, beans, etc.

- Archery
- Hiking/walking
- Stargazing
- Rock climbing
- Farm equipment demonstrations
- Wagon/hay rides
- Wildlife watching/bird watching
- Air-boat tours
- Butterfly farms
- Agricultural photo shoots
- Plantation tours
- Beekeeping
- A rural life step back into time
- Dude ranch/ranch fun



Meeting planning/other hospitality services

- Picnics
- Bonfires
- Weddings
- Receptions
- Company retreats

- Family reunions
- Church groups
- Mystery dining
- Catering for events held on your farm/ranch



Holidays/seasonal events

- Cut your own Christmas tree
- Christmas with Santa on the farm
- Valentine's Day specials
- Spring planting events
- Easter egg hunts
- Runs and other sporting events

- Music festivals
- Arts and crafts festivals
- Crop maze
- Haunted hay rides/haunted house
- Other harvest-time activities



Is Skydiving an allowable Agritourism activity?

- Nipper v. Walton County, 2013-CA-694, First Judicial Circuit Court in and for Walton County, Florida-Final Judgment of the Circuit Court denied Plaintiffs/landowners' declaratory judgment request that a skydiving operation on their farm property was an "agritourism" activity immune from local regulation pursuant to 570.85(1), Florida Statutes finding that the skydiving was the primary function at the location and that farming activities were subordinate and secondary to skydiving.
- Nipper v. Walton County, 208 So.3d 331 (Fla. 1st DCA 2017)-

Trial court's conclusion that skydiving was not "agritourism" for the purposes of the § 570.85 preemption was not challenged on appeal. Appellate court reversed injunction entered in favor of the County finding that the provisions of the County's Comprehensive Plan for Large Scale Agricultural did not specifically include or exclude skydiving on its list of permissible land uses. Comp Plan language of "outdoor recreational activities such as" indicated that skydiving may be a permissible activity in Large Scale Agricultural areas.



Express Preemptive Language

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.



What is a "nonresidential farm building"?

(2)(d) "Nonresidential farm building" means:

- any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes,
- is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461,
- and is not intended to be used as a residential dwelling.
- The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.



14269 BT LLC v. Village of Wellington, 240 So. 3d I (Fla. 4th DCA 2018)

- Horse farm sought second-tier certiorari review of an administrative code enforcement order finding that the farm violated several sections of the Village of Wellington's land development regulations resulting from unpermitted improvements including the construction of two barns, a storage building, a manure bin, a driveway, and a swale. Code enforcement order mandated several corrective actions including removing one of the barns.
- Prior to 2011, § 604.50(1), Fla. Stat. only exempted nonresidential farm buildings from "any county or municipal building code." In 2011, the legislature broadened the language of this section by removing the word building, so it now generally applies to "any county or municipal code or fee " Ch. 2011-7, § 6, Laws of Florida.



14269 BT LLC v. Village of Wellington, 240 So. 3d I (Fla. 4th DCA 2018)

- Legislature's 2011 amendment indicated an intent to expand the exemption to include any county or municipal code rather than merely including county or municipal building codes. As such, appellate court concluded that the structures were not only exempt from the Village's building permit requirements, but also exempt from the Village's zoning regulations.
- Rejected farm's argument that it was also exempt from complying with the Village's storm-water management regulations as driveways, swales, and storm-water systems do not fall within the meaning of "nonresidential farm buildings."



Martin Dureiko v. Miami Dade County—Circuit Court, I Ith Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 05-407 AP. Citation No. 959708. July 14, 2006—3 Fla. L. Weekly Supp. 958a

- 2005 Code Enforcement citation issued to landowner, Dureiko for violation of the Miami-Dade County Code for failure
 to obtain a required building permit prior to commencing work on an airplane hanger built on Dureiko's mango farm in
 South Dade. Citation upheld after an administrative hearing and then appealed to Circuit Court.
- Circuit Court found that competent substantial evidence did not support hearing officer's finding that building on farm that landowner testified was used as both airplane hanger and for storage of agricultural equipment was not an agricultural building exempt from building code and quashed the citation.
- Seemingly accepted landowner arguments that since the type of "exempt" building is not clearly defined in the statute (§604.50), an airplane hanger located on the farm can be classified as having an agricultural use because landowner claimed that he stored some farm equipment there (no farm equipment located in building at time of inspection) and that there is no specific percentage of space that a building must devote to agricultural use in order to qualify for the exemption.



TREE PRUNING, TRIMMING, OR REMOVAL, SECTION 163.045, FLA. STAT.

Effective July 1, 2019

Statutory Intent or Purpose

None stated in statutory provision.

Express Preemptive Language

- (I) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.
- (2) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.



TREE PRUNING, TRIMMING, OR REMOVAL, SECTION 163.045, FLA. STAT.

What is the statewide "problem" solved by this express preemption?

- HB 1159 titled Private Property Rights filed in February 2019 and included the tree trimming preemption along with several other "property rights" provisions.
- Legislative Bill Analysis for HB 1159 lacks any substantive discussion or analysis of any statewide interest by the preemption.
- Statutory provision legislatively imposes a one size fits all statewide "solution" for an issue, tree and canopy protection, that is inherently local and community specific. Urban, sub-urban and rural areas are treated the same with no differentiation.



TREE PRUNING, TRIMMING, OR REMOVAL, SECTION 163.045, FLA. STAT.

Local government litigation

<u>City of Pensacola v. Vickery</u>, Case No. 2019 CA 1175, First Judicial Circuit Court in and for Escambia County, Florida

- Property owner, Vickery was denied a tree removal permit by City for a 200 year old live oak before the effective date of s. 163.045. After statute passed, Vickery hired an arborist who drafted a letter stating the subject tree was a danger to people and property. City challenged the veracity of the letter, filed a Complaint for Declaratory and Injunctive Relief, and obtained an ex parte temporary injunction to restrain property owner from removing the tree. Trial court conducted an evidentiary hearing on Vickery Motion to Dissolve Injunction on August 5, 2019 where court denied the request finding that the statute did not preclude local governments from ensuring the documentation of "danger" complies with industry standards applicable to ISA certified arborists and landscape architects and found no conflict between the statute and City Code at issue as they may co-exist as the Pensacola Code is simply more stringent than the statute.
- Decision is on appeal at First District Court of Appeal—<u>Larry and Ellen Vickery vs. City of Pensacola</u>, Case Number: ID19-4344 and is currently in the briefing stage.



VEGETABLE GARDENS, SECTION 604.71, FLA STAT.

Effective July 1, 2019

Statutory Intent or Purpose

Encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

Express Preemptive Language

Except as otherwise provided by law, a county, municipality, or other political subdivision of this state may not regulate vegetable gardens on residential properties. Any such local ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

Does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.



VEGETABLE GARDENS, SECTION 604.71, FLA STAT.

What is the statewide "problem" solved by this express preemption?

- Ricketts v.Vill. of Miami Shores, 232 So. 3d 1095 (Fla. 3d DCA 2017)
 - Residents of the Village of Miami Shores brought an action challenging the constitutionality of a zoning ordinance that prohibited the residents from growing vegetables in their front yard. Appellate court upheld the zoning ordinance using a rational basis standard of review finding that the ordinance was rationally related to the Village code's design standards and landscaping regulations.
- SB 82 filed in January 2019 seeking to reverse the Ricketts decision. Legislative Bill Analysis for SB 82 is devoid of any substantive discussion or analysis of a wide-spread problem in Florida of local government regulations impeding adequate home vegetable or fruit production or unduly preventing property owners from planting home gardens on their properties.
- SB 82 passed both chambers by large margins.
- Legislatively imposes a one size fits all statewide "solution" for an issue that is inherently local and community specific—neighborhood design and landscape standards. Urban, sub-urban and rural areas are treated the same and all are prevented from regulating the location, design, or appearance of a residential "vegetable garden."



VEGETABLE GARDENS, SECTION 604.71, FLA STAT.

Result--No local governmental regulation available to prevent your neighbor from planting their own personal front yard "Field of Dreams"





PUNITIVE MEASURES

Attorneys Fees § 57.112, Fla. Stat. (Ch. 2019-151, Laws of Fla; HB 829)

- Applies to civil actions filed against a local government commenced on or after July 1, 2019, to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law.
- Does not apply to local ordinances adopted pursuant to part II, Chapter 163, Florida Statutes or the building (§ 553.73, Fla. Stat.) or fire prevention codes (§ 633.202, Fla. Stat.).
- Prevailing party provision (earlier drafts provided for one-way attorney's fees).
- Mandatory: "court shall" assess and award reasonable attorney's fees and costs and damages to the prevailing party.



PUNITIVE MEASURES

Attorneys Fees § 57.112, Fla. Stat. (Ch. 2019-151, Laws of Fla; HB 829)

- Attorneys fees may not be awarded if:
 - The governmental entity receives written notice that an ordinance publicly noticed or adopted is expressly preempted by the State Constitution or state law; and
 - The governmental entity withdraws the proposed ordinance within 30 days; or if adopted, notices intent to repeal within 30 days and repeals the ordinance within 30 days thereafter.



PUNITIVE MEASURES

Bill Analysis for similar bill SB 1140 recognized:

C. Government Sector Impact:

The bill may open local governments to liability to pay attorney fees in cases where preemption of a subject area is unclear and the local government did *not* intentionally flout any express preemption of a subject area by passing a particular ordinance. In order words, local government may be penalized in a case where they had a good faith belief that they were passing a legally permissible ordinance.

Bill Analysis and Fiscal Impact Statement CS/SB 1140, Judiciary Committee and Senator Hutson (March 19, 2019).



PRACTICAL CONSIDERATIONS

- Whether the statute contains a specific and clear statement of express preemption; if not, whether there is a potential implied preemption or conflict with general or special law?
- Is the statutory preemption constitutionally permissible?
- Whether the preemption is broad enough to cover the ordinance or regulation at issue?
- Does the preemption apply to pre-existing ordinances or regulations?
- What issues of interpretation might arise as to the particular facts?
- Whether any potentially invalid provisions of the local regulation can be severed?
- Cost/benefit analysis regarding potential legal challenges Attorneys' Fees, litigation costs, importance
 of governmental or public health, safety, welfare interest implicated.



RESOURCES FOR FURTHER READING

- Florida Association of Counties and Florida Association of County Attorneys, Preemption of County Authority in Florida and State Preemption Cheat Sheet available at https://www.fl-counties.com/preemption-tracker (2016)
- Alan Stonecipher and Ben Wilcox, <u>Preemption Strategy The Attack on Home</u> Rule in Florida available at <u>www.integrityflorida.org</u> (January 2020).
- Judge James R. Wolf and Sarah Harley Bolinder, <u>The Effectiveness of Home Rule: A Preemption and Conflict Analysis</u> 83 Fla. Bar. J. 92 (June 2009).





Cybersecurity, Hacking and Ransomware: What Every Local Government Needs to Know

June 10th, 2020

WWW.ARGOCYBER.COM

Who We Are

Jim Rogers, CEO, SME & Co-Founder

has over 25 years of industry Cyber Security Experience in the Department of Defense and the Intelligence Community. Jim started his career here in Pensacola as an enlisted person being trained in Electronic Warfare and Cryptologic operations. Jim served on multiple US Navy warships during his tenure in the US Navy. During Jim's last tour of Duty in Norfolk, Virginia in the Mid 1990's, he began his journey into Cyber security and has completed both a BS and MS in Cyber Security and received Graduate Certificates from the National Defense University as well as many top industry Cyber Security Certifications. Jim Currently mentors many up-and-coming cyber security professionals in hopes to impart his knowledge and experience on the next generation.

Kevin J. Schmidt, CTO & Co-Founder

is a born-and-raised native of West Pensacola. In 1993 he was offered and opportunity to work at the Gulf Coast Internet Company (GCIC). At GCIC he was able to sharpen his skills in software engineering, system administration, network engineering, and leadership. At the age of 23, Kevin took what he learned and moved to Atlanta, GA. For 21 years, Kevin worked at various start-ups and software companies in and around Atlanta. He was employee number five at one of the first Security Information and Event Management (SIEM) software companies, which IBM eventually bought. He spent 12 years at Dell Secureworks, a national MSSP. He is also a published author and holds a cyber security and machine learning patent.



Agenda

- It's all about Cyber Resiliency
- Types of Hackers
- What is Ransomware?
- How is Ransomware Spread?
- Decreasing Your Risk from Ransomware
- Data Protections Requirements
- Legal Considerations & Ransomware
- Closing Thoughts
- Questions





It's All about Cyber Resiliency

"Cyber resilience refers to an entity's ability to continuously deliver the intended outcome, despite adverse cyber events." - https://en.wikipedia.org/wiki/Cyber resilience



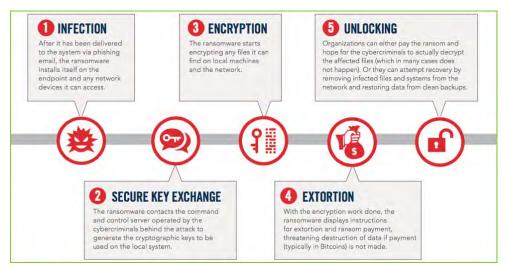
Types of Hackers

- Types of hackers, or threat actors, typically fall into one of several categories.
 - Script Kiddies
 - Hackers with little to no skill who only use the tools and exploits written by others
 - Hacktivists
 - Hackers who are driven by a cause like social change, political agendas, or terrorism
 - Organized Crime
 - Hackers who are part of a crime group that is well-funded and highly sophisticated
 - Advanced Persistent Threats (APT)
 - Highly trained and funded groups of hackers (often by nation states) with covert and open-source intelligence at their disposal



What is Ransomware?

- Encrypt your data and hold it hostage until you pay up.
 - A variant on this is to ask for money to not LEAK your data.
- Ransomware Steps:
 - Infection
 - Key exchange
 - Encryption
 - Extortion
 - Unlocking

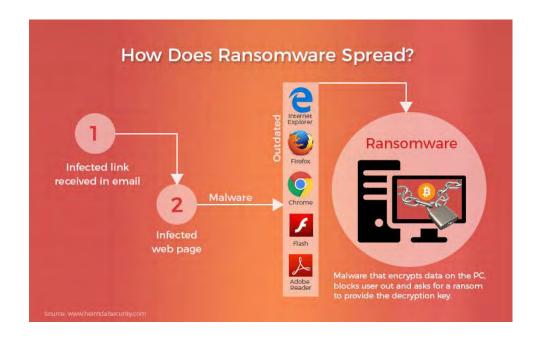


In a recent ransomware survey, 80% of respondents perceived ransomware as an extreme or moderate threat, and of those organizations that suffered a ransomware attack, 75% experienced up to five attacks over one year. It's no surprise given that ransomware is (at time of publication) a USD \$2 billion 'market', and rapidly growing as threat actors, including organized crime and malicious states, try to take their share.



How is Ransomware Spread?

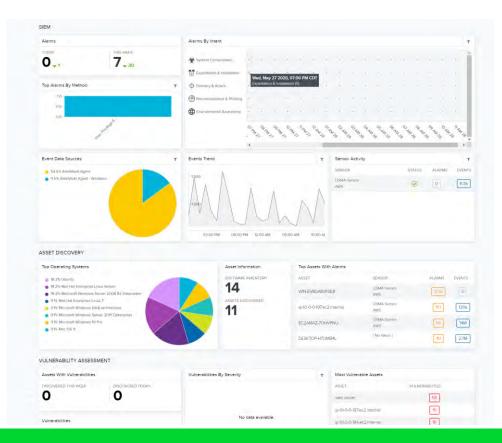
- For each "method," there are ever-evolving variants
 - Malicious Email / Phishing
 - Unpatched systems
 - World accessible remote access
 - Remote Desktop Protocol (RDP)
 - Secure Shell (SSH)





Decreasing Your Risk from Ransomware

- Reduce your time to detection and response
 - Architect your environment to minimize cross-infection
 - Implement a backup plan
 - Train your organization
 - Regularly scan for and patch vulnerabilities
 - Ensure your security solutions are up to date
 - Continuous Monitoring
 - Asset Discovery
 - Vulnerability Assessment
 - Network Intrusion Detection (IDS)
 - Host Intrusion Detection (HIDS) and File Integrity Monitoring (FIM)
 - Security Information and Event Management (SIEM) Event Correlation & Alerting
 - SIEM Log Management & Reporting
- Let's discuss each of these now.





• Architect your environment to minimize cross-infection – This includes implementing network segmentation and a least-privilege model to limit ability for any ransomware to traverse the network.



• **Implement a backup plan** – Even if only part of your data is irretrievably lost due to a ransomware attack, it can still cost your organization in terms of lost productivity and the efforts to try to retrieve that data. Defining and implementing a backup policy is a critical defense, and, using offline backups.



• Train your organization – People are often the weak link when it comes to ransomware. Regularly train your employees on how to identify phishing attempts, the risks associated with opening email attachments, and more. Equally important is to ensure they know what to do if they feel that they have been compromised, including who and how to report the incident to ensure the fastest response.



• Regularly scan for and patch vulnerabilities — The WannaCry ransomware took advantage of an exploit for which a patch had been available for over one month. The organizations impacted were either unaware of the patch or had failed to deploy the patch in a timely fashion. Knowing what assets exist across your environment, what software and services they run, understanding where vulnerabilities exist and what patches are available are all critical to being able to shore up any gaps before a malicious actor exploits that vulnerability.



• Ensure your security solutions are up to date — Any software solution may have flaws, and many software security solutions like vulnerability or malware defense solutions require threat intelligence to be able to know what threats are out there and how to detect them. Ensure that you regularly update your security solutions to address any issues, add new and enhanced capabilities, and ensure that they are running with their latest threat intelligence so that they are optimally protecting your environment.



 Asset Discovery - Monitors your on-premises and cloud environments for new assets, identifying new systems and devices that need to be monitored and assessed for vulnerabilities that ransomware could exploit.



• **Vulnerability Assessment** — Continually scans your environments to detect vulnerabilities that attackers could exploit in a ransomware attack. The platform ranks vulnerabilities by severity so that you can prioritize your remediation efforts.



• **Network Intrusion Detection (IDS)** — Analyzes the network traffic to detect signatures of known ransomware, and communications with known malicious servers. Using field-proven IDS technologies, we identify attacks, malware, policy violations, and port scans that could be indicators of malicious activity on your networks.



• Host Intrusion Detection (HIDS) and File Integrity Monitoring (FIM) — Analyzes system behavior and configuration status to identify suspicious activity and potential exposure. This includes the ability to identify changes to critical system and application files, as well as modifications to the Windows Registry, that could be made to initiate the ransomware's encryption engine.



• SIEM Event Correlation — Using machine learning and state-based correlation, many seemingly unrelated events across disparate systems to pinpoint the few events that are truly important in that mass of information. Such platforms are regularly updated with ransomware-specific correlation rules that identify a range of behaviors that are indicative of a ransomware infection, including downloading the ransomware file, systems attempting to connect with a C&C server and post data, multiple failed connections from a system attempting to connect to a domain (or multiple domains) within a narrow time window, and more.



• SIEM Log Management & Reporting — Continuous monitoring platforms provide the ability to automate the centralized collection and normalization of events and logs from devices, servers, applications and more from across your on-premises and cloud environments, as well as from your cloud applications like Office 365. This data is can be centrally retained for at least one year, helping support compliance requirements and the ability to perform forensics on attacks that may have only recently been discovered, but that require investigation of more historic data. Centralizing collection also supports the automatic analysis of anomalies and attacks like ransomware and enables analysts to perform search and forensics on collected data. Analysts can also run any of the built-in and customizable reports, such as to demonstrate compliance with standards like PCI DSS, HIPAA, and so on for regular review of security events and activities.

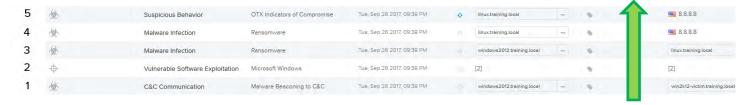


- Asset Discovery example:
 - The below alert shows that remote access on this asset is open to the world.

	LAST SUTN	CATEGORY ±	SUBCATEGORY :	ASSET	SEVERITY =	DESCRIPTION
ŵ	Mon, Mar 23 2020, 08:20 PM	Global access to administration port	Windows Remote Desktop	WIN-EVROA8VESE8 •	Medium	Global access to the Windows Remote Desktop port has been defined $\underline{}$



- Alerting example:
 - Below are 5 alerts showing an actual Ransomware infection in a lab.





Data Protection Requirements

- Counties need to understand what data is on their networks and what their responsibilities are to protect it
 - FISMA Federal Law enforcement data
 - HIPAA and PII County Health Departments
 - PCI-DSS Credit Card data
 - GDPR- any counties doing business with Europeans?



Legal Considerations & Ransomware

- We are not lawyers, however, consider...
 - Bitcoin is the preferred payment method for criminals
 - Arranging for Bitcoin payment opens an organization to other threats
 - IRS deems Bitcoin as property, not currency, and is taxable
 - For regulated entities, NOT keeping your systems update-to-date and patched could have ramifications
 - Release of sensitive attorney documents, notes, etc.



Closing Thoughts

- It comes to down to People, Process, and Technology
 - People: People are the weakest link. Provide users with annual and continuing training on cyber hygiene, cyber threats, etc.
 - Process: Make sure your organization has processes and procedures in place to respond to and recover from Ransomware and other cyber attacks.
 - Technology: What technology is your organization employing to continuously monitor and alert on potential attacks?
 - If IT budgets and/or resources are tight, you should be considering an organization like Argo Cyber Systems.



Thank you!

Questions?



About Argo Cyber Systems

It's not a matter of if you will be compromised, but when it will happen. Every day we see a new headline that turns the spotlight on cyber-attacks of retail giants and enterprise businesses. But SMBs are not immune to cyber-attack. It's alarming and causes a ripple effect of fear across our daily lives. While this intense publicity increases awareness for cyber security in general – it's not always effective at bringing attention to business leaders who think smaller companies are inherently unattractive targets for cyber criminals. This sort of misunderstanding leaves companies highly vulnerable, especially those with limited resources, expertise, and budgets. Located in beautiful and historic downtown Pensacola, **Argo Cyber Systems** is a pure-play cyber security firm. We are cyber security and intelligence experts offering dedicated security monitoring of critical infrastructure assets, businesses, and other environments. Our platform is attested as compliant for several regulatory and cybersecurity standards, including **NIST, RMF, FedRAMP, DOD CMMC, PCI DSS, HIPAA, HITECH, and SOC 2**. **Argo Cyber Systems** is here to help.



Shaming and Defaming: When the Public Attacks County Employees

FLORIDA ASSOCIATION OF COUNTY ATTORNEYS 2020 CONTINUING LEGAL EDUCATION PROGRAM JUNE 11, 2020

Kerry Parsons, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
kparsons@ngn-tally.com
(850) 224-4070

Valerie Vicente, Esq.
Nabors, Giblin & Nickerson, P.A.
8201 Peters Road, Suite 1000
Plantation, Florida 33324

vvicente@ngnlaw.com

(954) 315-0268



"...they are incompetent, and their actions are illegal."

"You are all blood sucking thugs."

"I pay taxes, so you work for me, start doing your job."

"You better get (expletive) ready, (expletive), I'm coming for you."

"What you are doing is illegal, so I'm putting you under citizens arrest"

OUTLINE OF THIS PRESENTATION

- Defamation: Definition, types, and elements
- Diminished Protections for "Public Officials"
- Secret Recordings of Local Government Officials Used by Citizens
- Suggestions: Policies and Procedures Related to Protecting County Employees
- Questions



DEFAMATION:

DEFINITION, TYPES, ELEMENTS

DEFAMATION DEFINED

■ The unprivileged publication of false statements which naturally and proximately result in injury to another.

- "Slander" is defined as the *speaking* of defamatory words, which tend to prejudice another person in his or her reputation, office, trade, business, or means of livelihood.
- "Libel" encompasses written, as opposed to oral, defamatory communications.

ELEMENTS OF DEFAMATION

- A statement of fact;
- Which is false;
- Having a defamatory effect;
- Identifying the plaintiff as the subject;
- Published to a third party;
- With malice or ill will by the defendant; and
- Leading to compensable damages to the plaintiff

DIMINISHED PROTECTIONS FOR PUBLIC OFFICIALS

DIMINISHED PROTECTIONS FOR "PUBLIC OFFICIALS"

■ In order to recover, a public official must prove <u>actual malice</u> on the part of the publisher.

Statement was made with knowledge that the <u>it was false</u> or with <u>reckless</u> disregard of whether it was false or not.

• Actual malice must be proved by **clear and convincing evidence**.

DIMINISHED PROTECTIONS FOR "PUBLIC OFFICIALS"

- Rationale for Diminished Protections:
 - O Public officials have significantly greater access to channels of communication in which they can reply to and can thus counteract a defamation. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).
 - o By having voluntarily assumed their influential roles in society, public officials must accept certain necessary consequences of an involvement in public affairs. One such consequence is the risk of closer public scrutiny. *Id*.
 - o There is a paramount public interest in the free flow of information to the public about its servants. *See Garrison v. Louisiana*, 379 U.S. 64 (1964).

WHO IS CONSIDERED A "PUBLIC OFFICIAL"

• "Public officials" include public officers, as well as public employees, who exercise or appear to have substantial responsibility for or control over the conduct of governmental affairs. *Rosenblatt v. Baer*, 383 U.S. 75 (1966).

■ The determination of who qualifies as a public official subject to the standard of actual malice is made on a <u>case-by-case basis</u>. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964).

■ It is a <u>question of law</u> to be decided by the court. *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 668 (Fla. 3d DCA 1981)

Nabors

Nickerson P A

Giblin &

PUBLIC OFFICIALS

- City Attorney
 - Finkel v. Sun Tattler Co., 348 So. 2d 51 (Fla. 4th DCA 1977)
- City Building Official
 - Cape Publications, Inc. v. Adams, 336 So. 2d 1197 (Fla. 4th DCA 1976)
- Supervisor of a county-owned recreation area
 - Rosenblatt v. Baer, 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966)
- City Police Officer
 - *Smith v. Russell*, 456 So. 2d 462 (Fla. 1984).
- Corrections Officer
 - Stewart v. Sun Sentinel Co., 695 So. 2d 360 (Fla. 4th DCA 1997)
- Deputy Sheriff.
 - St. Amant v. Thompson, 390 U.S. 727 (1968).

PUBLIC OFFICIALS

- COMPARE: Adult Congregate Living Facility Coordinator for Florida Department of Health and Rehabilitative Services not a "public official"
 - o Mid-level employee of the state health department
 - Was neither an administrator or supervisor
 - Was not involved in formulating policy
 - Did not handle public funds
 - Worked under the direction of a supervisor
 - Had no staff responsible to him

FLA. STAT. 768.295: STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP) PROHIBITED

- Florida's Anti-SLAPP statute protects the exercise of the right of free speech in connection with public issues, and provides:
- (I) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

[....]

- (3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue [...]
- (4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment [...]. The claimant or governmental entity shall thereafter file a response [...]. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

FLA. STAT. 768.295: STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP) PROHIBITED

- <u>Illustration</u>: If a public official filed a defamation suit against a local blogger, then the blogger can file a Motion for Summary Judgment, on the basis of Florida Statute 768.295, alleging that the defamation suit is without merit, and was filed primarily because the blogger had exercised his/her constitutional right of free speech in connection with a public issue. If the blogger prevails, Fla. Stat. 768.295 may entitle him/her to damages and attorney fees.
- Fla. Stat. 768.295(5) further provides that in any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity **shall report such finding** [...] to the Attorney General [who] shall report any violation [...] to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives.

Nabors
Giblin &
Nickerson P.A.

SECRET RECORDINGS OF COUNTY OFFICIALS BY CITIZENS

SECRET RECORDINGS OF LOCAL GOVERNMENT OFFICIALS

McDonough v. Fernandez-Rundle, 862 F.3d 1314 (U.S. 11th Cir. 2017).

- Citizen lodged numerous complaints against an officer of the Homestead Police Department. Chief of Police invited the citizen to meet in this office to discuss the complaints. Unbeknown to the Chief, the citizen recorded a potion of the meeting on his cell phone and later posted portions of the recording on the interest. After the publication he received a letter from the Miami-Dade State Attorney informing him that his recording violated the Florida Security of Communications Act, a felony (Fla. Stat. 934.03). She forbade him from making future recordings and threatened him with prosecution if he did so.
- The citizen then sued the state attorney under § 1983 alleging that the statute did not apply to him, and that her "threats" were a violation of his First Amendment right to free speech.

Nabors
Giblin &
Nickerson P.A.

I I TH CIR. COURT OF APPEALS FINDINGS

- The chief failed to exhibit the expectation of privacy that is required by the statute.
- The recording also falls under an exception for communications uttered at a public meeting.
- The circumstances must justify an expectation of privacy.

LESSONS LEARNED

• The chief set no ground rules for the meeting, at no point did he suggest that the meeting was confidential or "off the record." No advance notice or publish or displayed rules that established confidentiality and certainly none that prohibited the taking or recording of the meeting. As such the chief failed to exhibit the expectation of privacy that is required by the statute.

THE CASE OF WEEKS V. STATE 2020 FLA. APP. LEXIS 4067 (FLA. 5TH DCA, MARCH 27, 2020)



SUGGESTIONS:

POLICIES & PROCEDURES
RELATED TO PROTECTING
COUNTY EMPLOYEES

POLICIES AND PROCEDURES RELATED TO PROTECTING COUNTY EMPLOYEES: RULES OF DECORUM

Establish and enforce rules related to proper decorum:

■ Florida Statute 286.0114(2) mandates that "[m]embers of the <u>public shall be</u> given a reasonable opportunity to be heard on a proposition before a board or commission."

■ Critically, the statute expressly provides that it "does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by Nabors Ciblin & Giblin &

Nickerson P.A.

POLICIES AND PROCEDURES RELATED TO PROTECTING COUNTY EMPLOYEES: RULES OF DECORUM

Miami Dade County Commission Rules - Rule 6.05 – Decorum

■ "Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission, shall be barred from further audience before the commission by the presiding officer, unless permission to continue or again address the commission be granted by the majority vote of the commission members present [...]"

Nabors
Giblin &
Nickerson P.A.

A BALANCING ACT: MAINTAINING DECORUM WITHOUT IMPEDING FREE SPEECH

Lozman v. City of Riviera Beach, 138 S. Ct. 1945 (2018)

Facts:

- Fane Lozman was a resident of the City of Riviera Beach where he was a frequent and vocal critic of the City.
- In November 2006, Lozman went to a city council meeting and spoke during the public comment period.
- He began to discuss the recent arrest of a "corrupt" county official when a councilmember ordered him to stop uttering those remarks.
- After Lozman continued, the councilmember ordered a police officer to arrest Lozman.

 Nabors

 Giblin &

Nickerson P.A

A BALANCING ACT: MAINTAINING DECORUM WITHOUT IMPEDING FREE SPEECH



Nabors
Giblin &
Nickerson P.A.

A BALANCING ACT: MAINTAINING DECORUM WITHOUT IMPEDING FREE SPEECH

Lozman v. City of Riviera Beach, 138 S. Ct. 1945 (2018)

- Chief Justice John Roberts said he found the video of Lozman's arrest "pretty chilling."
- The U.S. Supreme Court ruled 8-1 that a plaintiff alleging that a government entity arrested him or her as part of an overall pattern of retaliation against the plaintiff can proceed with a retaliation lawsuit even if there was probable cause for an arrest.

Nabors
Giblin &
Nickerson P.A.

RECOMMENDATIONS TO ASSIST WITH PUBLIC COMMENTS

- Create a set of standards that are published.
 - Identify when public comment will be taken at meetings;
 - Whether public comment cards must be filled out;
 - Any time restrictions; and
 - Identify what behavior will not be tolerated.
- Post the County's rules at the meeting, whether on the screen or on a poster.
- Briefly explain the rules prior to public comment.

WHEN COUNTY EMPLOYEES ARE THREATENED

- Recent Examples;
- Speak to the Employee;
- Notify law enforcement with the employee.

Nabors
Giblin &
Nickerson P.A.

QUESTIONS

"Bridgegate" **and**Beyond: The State of
Public Corruption



Our name is easy to remember. Our work is hard to forget.







• POLL:

Do the actions described constitute a violation of federal statutes guarding against corruption (federal wire fraud/honest services fraud)?

Indictment

• 3rd Circuit Opinion

- SCOTUS Opinion
- Federal wire fraud requires <u>money or property</u> to be the object of the scheme to defraud
- Honest services fraud also requires money or property to be the object of the scheme to defraud

Regulatory Power v. Proprietary

We cannot agree. As we explain below, the Government could not have proved—on either of its theories, though for different reasons—that Baroni's and Kelly's scheme was "directed at the [Pert Authority's] property." Brief for United States 44. Baroni and Kelly indeed "plotted to reduce [Fort Lee's] lanes." *Id.*, at 34. But that realignment was a quintessential exercise of regulatory power. And this Court has already held that a scheme to alter such a regulatory choice is not one to appropriate the government's property. See *Cleveland*, 531 U. S., at 23. By contrast, a scheme to usurp a public employee's paid time is one to take the government's property. But Baroni's and Kelly's plan

A government's right to its employees' time and labor, by contrast, can undergird a property fraud prosecution. Suppose that a mayor uses deception to get "on-the-clock city workers" to renovate his daughter's new home. United States v. Pabey, 664 F. 3d 1084, 1089 (CA7 2011). Or imagine that a city parks commissioner induces his employees into doing gardening work for political contributors. See United States v. Delano, 55 F. 3d 720, 723 (CA2 1995). As both defendants agree, the cost of those employees' services would qualify as an economic loss to a city, sufficient to meet the federal fraud statutes' property requirement. See Brief for Respondent Baroni 27; Tr. of Oral Arg. 16. No less than if the official took cash out of the city's bank account would he have deprived the city of a "valuable entitlement." Pasquantino, 544 U.S., at 357.

But that property must play more than some bit part in a scheme: It must be an "object of the fraud." *Id.*, at 355;

- Conspiracy: undisputed
- Abuse of power: undisputed
- "But not every corrupt act by state or local officials is a federal crime..."
- "Because the scheme here did not aim to obtain money or property...could not have violated the federal-program fraud or wire fraud laws."

POLL:

What if this case was decided under Florida's Code of Ethics?

- Article II, Section 8, Florida Constitution
- Chapter 112, Florida Statutes

A&Q

https://www.youtube.com/watch?v=VKHV0LLvhXM







Legislative Update

2020 FACA Virtual CLE

Overview:

Budget

Post-Session

Elections

Bills That Passed



Regulatory Preemptions

- Florida Drug and Cosmetic Act SB 172 (Bradley)
- Towing and Immobilizing Vehicles and Vessels CS/CS/HB 133 (McClain)
- Fireworks CS/CS/CS/SB 140 (Hutson)
- Deregulation of Professions and Occupations CS/HB 1193 (Ingoglia)



- Prohibition Against Abuse of Public Position
 HB 7009 (Committee on Public Integrity & Ethics)
- Government Accountability
 CS/SB 1466 (Baxley)



Finance and Tax

- Taxation
 CS/HB 7097 (Ways and Means)
- Local Government Efficiency Task Force HB 5003 (Appropriations Committee)



 Community Planning CS/SB 1398 (Flores)



Contracts/ Procurement

- Public Procurement of Services CS/CS/HB 441 (DiCeglie)
- Recycling/Environmental Regulation CS/HB 73 (Overdorf)
- Verification of Employment Eligibility CS/CS/CS/SB 664 (Lee)
- Public Financing of Construction Projects CS/CS/SB 178 (Rodriguez)
- Local Government Public Construction Works CS/CS/HB 279 (Smith, D.)
- Public Construction/Retainage CS/HB 101 (Andrade)



Employment/ Human Relations

- Florida Commission on Human Relations CS/HB 255 (Antone)
- Fire Prevention and Control SB 1092 (Bean)
- Florida Retirement System Employer Contribution Rates HB 5007 (Appropriations Committee)



Economic Development

- Economic Development CS/SB 426 (Montford)
- Visit Florida Reauthorization
 SB 362 (Hooper)
- Broadband Internet Service CS/HB 969 (Drake)



Growth Management

- Growth Management CS/CS/SB 410 (Perry)
- Impact Fees
 CS/CS/CS/SB 1066 (Gruters)
- Housing CS/CS/CS/HB 1339 (Yarborough)
- Homelessness HB 163 (Altman)
- Recreational Vehicle Parks CS/CS/HB 343 (Fetterhoff)
- Law Enforcement Vehicles CS/SB 476 (Hooper)
- Housing Discrimination
 SB 374 (Rouson)



Environmental Regulation

- Environmental Enforcement CS/CS/HB 1091 (Fine)
- Environmental Resource Management CS/CS/SB 712 (Mayfield)



Transportation

- Essential State Infrastructure CS/SB 7018 (Infrastructure and Security)
- Infrastructure Regulation CS/CS/HB 1095 (Fitzenhagen)
- Transportation Network Companies CS/ CS/HB 1039 (Rommel)
- Electric Bicycles
 CS/CS/HB 971 (Grant, M.)



Public Safety

- Public Nuisances
 CS/CS/HB 625 (Newton)
- Public Records Exemption/Disaster Recovery Assistance CS/SB 966 (Gainer)
- Public Records & Meetings Exemption/911, E911, or Public Safety Radio Communication System CS/CS/SB 1060 (Thurston)
- Alert Systems in Public Schools CS/CS/SB 70 (Book)
- Security in Trial Court Facilities
 CS/HB 131 (McClain)
- Emergency Sheltering of Persons with Pets CS/HB 705 (Killebrew)



Bills that Died

- Sovereign Immunity Claims Bills SB 1302 (Flores)
- Public Records Litigation
 SB 162 (Perry); HB 195 (Rodrigues)
- Bert Harris
 SB 1766 (Growth Management) Lee; HB 519 (Private Property Rights) Grant
- County Attorney Public Records Exemption SB 248 (Hooper); HB 63 (Maggard)
- Legal Notice
 HB 7 (Fine); SB 1340 (Gruters)
- Vacation Rentals
 HB 1011 (Fischer); SB 1128 (Diaz)
- Communications Services Tax
 SB 1174 (Hutson); HB 701 (Fischer)



Questions?

Laura Youmans
Legislative Counsel
lyoumans@fl-counties.com
(850)294-1838

Presentation Outline and Notes
Legislative Update
2020 Florida Association of County Attorneys Virtual CLE
Thursday June 11, 2020

2020 Session Overview:

Budget Post-Session Elections

Bills That Passed

Regulatory Preemptions

 Florida Drug and Cosmetic Act SB 172 (Bradley)

The bill preempts the regulation of over-the-counter proprietary drugs or cosmetics (includes sunscreen) to the state.

Effective date: July 1, 2020.

 Towing and Immobilizing Vehicles and Vessels CS/CS/HB 133 (McClain)

The bill requires counties and allows municipalities to establish maximum rates for the towing or immobilization of vessels, as well as vehicles. It prohibits counties and municipalities from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or towing businesses. Effective date: October 1, 2020.

 Fireworks CS/CS/CS/SB 140 (Hutson)

The bill creates an exemption allowing for the use of fireworks on three designated holidays: New Year's Day (January 1), Independence Day (July 4) and New Year's Eve (December 31).

Effective date: April 8, 2020.

Approved by Governor, Ch. 2020-11, Laws of Florida

 Deregulation of Professions and Occupations CS/HB 1193 (Ingoglia)

It removes or reduces licensing and training requirements for various professions, including building code inspectors. Authorizes employees of public or private animal shelters to implant microchips for dogs and cats. The bill preempts the licensing of mobile food dispensing vehicles (food trucks) to the Department of Business and Professional Regulation (DBPR).

Effective date: July 1, 2020.

Ethics and Elections

Prohibition Against Abuse of Public Position
 HB 7009 (Committee on Public Integrity & Ethics)

The bill reenacts provisions of the Florida Code of Ethics for Public Officers and Employees that providing penalties for violations of Article II, section 8(h)(2) of the Florida Constitution, prohibiting the abuse of public position by gaining a disproportionate benefit. The provision was adopted by voters in the

2018 general election and implemented by Florida Commission on Ethics Rule 34-18.001 (adopted July 26, 2019).

Effective date: December 31, 2020.

Government Accountability CS/SB 1466 (Baxley)

The bill excludes certain acts or omissions by board members or employees of special districts (Ch. 189, F.S.) or community development districts (Ch. 190, F.S.) from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution.

It removes the current law requirement for online posting of a special district's public facilities report and any meeting or workshop materials.

Effective date: July 1, 2020.

Finance and Tax

Taxation

CS/HB 7097 (Ways and Means)

The bill is the comprehensive "tax package" for the 2020 legislative session, which includes several tax reductions and other tax-related modifications to current law of interest to local governments. It increases the population limit, under which a county is authorized to use its tourist development tax revenues for zoological parks, fishing piers and nature centers, from 750,000 to 950,000. The bill prohibits an owner of a public building from soliciting any payment for providing the allocation letter needed to receive a federal income tax deduction for energy-efficient construction. The estimated fiscal impact of the bill to local governments in fiscal year 2020-21 is \$10.8 million.

Effective July 1, 2020, except as otherwise provided.

Approved by Governor, Ch. 2020-10, Laws of Florida.

Local Government Efficiency Task Force HB 5003 (Appropriations Committee)

HB 5003 is the implementing bill for the 2020-21 General Appropriations Act. It contains provisions establishing the Local Government Efficiency Task Force within the legislature to review the governance structure and function of local governments and make recommendations on any changes that may be necessary to make such governments more efficient. It directs the Task Force to convene its first meeting by November 15, 2020 and submit a report to the governor and legislature by June 1, 2021. Effective date: July 1, 2020.

Public Meetings

Community Planning CS/SB 1398 (Flores)

The bill authorizes the use of communications media technology for board meetings of Regional Planning Councils that cover three or more counties. A voting member who appears via real-time communications media technology that is broadcast publicly at the meeting location may be counted toward the meeting's quorum requirement if at least one-third of the voting members are physically present at the meeting location.

Effective date: July 1, 2020

Contracts/Procurement

Public Procurement of Services CS/CS/HB 441 (DiCeglie)

The bill increases the maximum limit for continuing contracts covered by the Consultants' Competitive Negotiation Act from an estimated per-project construction cost of \$2 million to \$4 million. The bill also increases the maximum limit for procuring a study using a continuing contract from \$200,000 per study to \$500,000.

Effective date: July 1, 2020.

Recycling/Environmental Regulation CS/HB 73 (Overdorf)

The bill requires contracts between local governments and vendors, as well as requests for proposals or other solicitations, for the collection, transport and processing of residential recycling materials include provisions to define and reduce levels of contamination in the materials collected. Specifically, the contracts or solicitations must identify strategies and obligations of the local government to reduce contamination, among other things.

Sent to Governor on June 3, 2020; Action due by June 18, 2020.

Effective date: July 1, 2020.

Verification of Employment Eligibility CS/CS/CS/SB 664 (Lee)

The bill requires all public employers and their contractors and subcontractors to register and use the E-Verify system to verify the work authorization status of all newly hired employees beginning January 1, 2021.

Effective date: July 1, 2020.

Public Financing of Construction Projects

CS/CS/SB 178 (Rodriguez)

The bill requires public entities that commission or manage a construction project within the coastal building zone using funds appropriated from the state to conduct a sea-level impact projection (SLIP) study before commencing construction.

Effective date: July 1, 2020.

Local Government Public Construction Works

CS/CS/HB 279 (Smith, D.)

The bill revises requirements for estimating the projected cost of a public construction work when a local government decides it is in its best interests to use its own services, employees and equipment instead of competitively bidding the project (projects exceeding \$300,000 or exceeding \$75,000 for electrical work adjusted for inflation). The bill also requires a local government to list all other governmental entities that may have additional permits or fees generated by the project when issuing a bidding document.

Public Construction/Retainage CS/HB 101 (Andrade)

The bill reduces the amount of retainage to 5% that a local government may retain across an entire construction project. The bill's provisions do not apply to any contract entered, pending approval, or advertised by a local government entity, on or before October 1, 2020.

Effective date: October 1, 2020.

Employment/Human Relations

Florida Commission on Human Relations CS/HB 255 (Antone)

The bill amends several provisions of law relating to the Florida Commission on Human Relations, including the Florida Civil Rights Act and the Florida Whistle-blower Act Effective date: July 1, 2020.

Fire Prevention and Control SB 1092 (Bean)

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program within the Division of State Fire Marshal.

Effective date: July 1, 2020.

Florida Retirement System Employer Contribution Rates HB 5007 (Appropriations Committee)

The bill revises the required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System. The total combined employer contributions estimated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2020-2021 will increase by approximately \$404.6 million above the contributions paid in Fiscal Year 2019-2020.

Effective date: July 1, 2020.

Economic Development

Economic Development CS/SB 426 (Montford)

The bill amends the operations and funding requirements of the Regional Rural Development Grants Program and the Rural Infrastructure Fund. Reducing the percentage of grant funds from the Regional Rural Development Grants Program that must be matched with non-state funds from 100 percent to 25 percent. Increases the amount of infrastructure project costs that grants from the Rural Infrastructure Fund may be used for from 30 percent to 50 percent of a project's total cost.

The bill also revises the responsibilities of divisions within the Department of Economic Opportunity. It requires the Executive Director or designee to serve on the board of the Florida Development Finance Corporation (state board). It revises certain language related to the operation and purpose of CareerSource Florida, Inc. It authorizes a chief elected official for a local workforce board to remove certain persons from the board for cause. The bill transfers numerous programs from CareerSource to the state board or DEO.

Sent to Governor on June 3, 2020; Action due by June 18, 2020.

Visit Florida Reauthorization SB 362 (Hooper)

The bill revises the scheduled repeal of Visit Florida from July 1, 2020, to October 1, 2023.

Effective date: April 8, 2020.

Approved by Governor, Ch. 2020-16, Laws of Florida.

Broadband Internet Service CS/HB 969 (Drake)

The bill designates the Department of Economic Opportunity (DEO) as lead state agency to facilitate expansion of broadband internet service in the state and creates the Office of Broadband within the agency for the purpose of developing, marketing and promoting broadband internet services. It directs DEO to create a strategic plan for increasing broadband service, to build local technology planning teams in coordination with local stakeholders, including local governments, and to encourage the use of broadband service in underserved areas through grant programs.

Sent to Governor May 26, 2020. Action required by June 10, 2020.

Effective date: July 1, 2020.

Growth Management

Growth Management CS/CS/SB 410 (Perry)

The bill amends various sections of law relating to growth management:

- The bill requires all cities and counties to adopt by July 1, 2023 (or by the date of its next proposed comprehensive plan amendment, whichever is earlier), a new mandatory element in their comprehensive plans that addresses the protection of private property rights.
- o It prohibits a county, after January 1, 2020, from adopting a comprehensive plan, land development regulation, or another form of restriction that limits the use of property located within a municipality, unless the municipality adopts such land use policies through its own ordinances, or that limits a municipality from deciding the land uses, density, or intensity allowed on lands annexed into a municipality (these prohibitions do not apply to charter counties with a population exceeding 750,000).
- The bill prohibits a municipality from annexing an area within another municipal jurisdiction without consent of the other municipal jurisdiction.
- The bill provides that any newly incorporated municipalities having a comprehensive plan effective after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- o It specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- The bill authorizes agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances.
- Finally, the bill extends the permit approval timeframes required in the Advanced Wireless Deployment Act to permit applications by all utilities in city and county rights-of-way.

Impact Fees

CS/CS/CS/SB 1066 (Gruters)

The bill prohibits the application of a new or increased impact fee to any pending permit application, unless the result is to decrease the total impact fees or mitigation costs imposed on an applicant. It provides that impact fee credits are assignable and transferable at any time after their establishment within the same impact fee zone or impact fee district, or an adjoining zone or district within the same local jurisdiction, that receives benefits from the improvement or contribution that generated the credits.

Effective date: July 1, 2020.

Housing

CS/CS/CS/HB 1339 (Yarborough)

The bill makes various changes relating to community development zoning, impact fees, affordable housing, and mobile homes and parks. Notable changes made by the bill include the following:

- Allows a local government to approve the development of affordable housing on a parcel zoned for residential, commercial, or industrial use.
- Removes the requirement that a local government first make a finding that an affordable housing shortage exists within its jurisdiction prior to adopting an ordinance to allow accessory dwelling units in an area zoned for single-family residential use.
- o Requires the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services.
- o Requires reporting on annual expenditures for affordable housing in reports of economic status information to the Office of Economic and Demographic Research.
- o Establishes biannual regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.
- Requires a municipality to fully offset costs to a developer if an affordable housing "linkage fee" is assessed for a residential or mixed-use residential development.
- o Provides that a building official may not audit a private inspector more than four times a
- Permits a mobile home park damaged or destroyed by natural forces to be rebuilt on the same site with the same density as was approved or built before being damaged or destroyed.
- Revises criteria and various reporting and distribution requirements pertaining to the State Housing Initiatives Partnership and State Apartment Incentive Loan program.

Sent to Governor on May 26, 2020; Action due by June 10, 2020.

Effective date: July 1, 2020.

Homelessness

HB 163 (Altman)

The bill aligns state requirements for the coordination of issues relating to homelessness by the Office of Homelessness in the Department of Children and Families with requirements of the federal Department of Housing and Urban Development. It requires each Continuum of Care lead agency to create a continuum of care plan that implements a housing crisis response system to prevent and end homelessness in the catchment area. It also requires the Office of Homelessness to align its catchment areas with federal catchment areas. The bill increases the amount of Challenge Grant funds each lead agency may receive annually from \$500,000 to \$750,000 and reduces the amount of matching funds or in-kind support from 100 percent to 25 percent. In addition, it amends current law provisions relating to the Rapid ReHousing and Housing First approaches to housing assistance.

Sent to the Governor June 3, 2020; Action due by June 18, 2020.

Effective date: July 1, 2020.

Recreational Vehicle Parks CS/CS/HB 343 (Fetterhoff)

The bill revises various requirements relating to recreational vehicle (RV) parks. It provides the Department of Health is the exclusive regulatory and permitting authority for sanitary and permitting standards and operational issues for RV parks, mobile home parks, lodging parks, and recreational camps. Relevant to local governments, the bill allows an RV park to be rebuilt after a natural disaster to the same density standards.

Effective date: July 1, 2020.

Law Enforcement Vehicles CS/SB 476 (Hooper)

The bill provides that community associations may not prohibit a law enforcement officer who is an owner, tenant, guest, or invitee of an owner from parking his or her law enforcement vehicle in an area where the unit owner or his or her guest otherwise has a right to park.

Effective date: February 21, 2020.

Approved by Governor, Ch. 2020-5, Laws of Florida

Housing Discrimination SB 374 (Rouson)

The bill extinguishes discriminatory restrictions from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. In addition, the bill clarifies that under the Fair Housing Act a victim of housing discrimination is not required to exhaust administrative remedies before filing a civil action.

Effective date: Upon becoming law.

Environmental Regulation

Environmental Enforcement CS/CS/HB 1091 (Fine)

The bill increases penalties by 50% for violations of numerous state environmental laws, including laws relating to pollution of groundwater and surface water, litter, coral reefs, aquatic preserves and solid waste. For certain violations, the bill provides that each day a violation occurs shall constitute a separate offense. In addition, it specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment. The bill also encourages counties and municipalities to establish an evaluation and rehabilitation program for "sanitary sewer laterals" on residential and commercial properties to identify and reduce extraneous flow from leaking laterals. A sanitary sewer lateral is a pipe that connects an individual property to the public sewer line. The bill specifies contents of the program, including the establishment of a publicly accessible database to store information concerning properties where a defective lateral has been identified. Also, the bill requires sellers to real property, prior to executing a contract for sale, to disclose to prospective purchasers any known defects in the properties' sanitary sewer lateral.

Environmental Resource Management CS/CS/SB 712 (Mayfield)

The bill amends various statutes relating to water quality improvements, including septic systems, basin management action plans, stormwater management systems, land application of biosolids, sanitary sewer overflows, and wastewater project grants.

- Septic Tanks The bill transfers regulation of septic tanks from the Department of Health to the Department of Environmental Protection (DEP) and directs DEP to develop rules for the location of septic tanks to prevent groundwater and surface water contamination and to protect public health. It requires local governments to develop septic tank remediation programs within a Basin Management Action Plan (BMAP) if DEP determines septic tanks are contributing at least 20 percent of the nutrient pollution within a basin or if DEP determines remediation is necessary to achieve the Total Maximum Daily Load (TMDL). The plan must identify projects necessary to reduce nutrient loads, include an inventory of existing septic tanks, identify septic tanks that will be connected to central sewer, replaced or upgraded, and include estimated costs to implement projects. Remediation plans must be adopted as part of a BMAP no later than July 2025.
- Stormwater The bill directs the DEP and water management districts to initiate rulemaking to update stormwater design criteria by January 2021. The bill also directs DEP to evaluate performance data relating to stormwater "self-certification" and to recommend improvements to the program to the legislature. DEP and the Department of Economic Opportunity, with local government cooperation, are charged with developing a model stormwater management program that will include model ordinances that target nutrient reduction and green infrastructure.
- BMAPs The bill requires a BMAP to include a wastewater plan if DEP determines wastewater treatment facilities are contributing more than 20% of nutrient pollution or if deemed necessary to achieve the nutrient total maximum daily load (TMDL) for the BMAP. The bill also requires DEP to submit a report to the legislature by July 2021 evaluating the costs of all septic system and wastewater treatment projects identified in BMAPs and identifying funding plans for the projects on a five-year basis. Also, the bill requires DEP to submit a report to the legislature by July 2021 assessing the water quality monitoring being conducted for each BMAP that is subject to nutrient load reductions.
- Agriculture The bill requires the Department of Agriculture and Consumer Services (DACS) to
 collect fertilizer and nutrient records from producers enrolled in the agricultural best
 management practices program and provide such records to DEP.
- Wastewater Grants The bill establishes a wastewater grant program in DEP to provide a 50% match for specified projects intended to reduce nutrient loads and requires DEP to identify projects that shall receive priority funding.
- **Biosolids** The bill directs DEP to adopt rules for biosolids and requires the rules to be ratified by the legislature.
- Sanitary Sewer Overflows/Wastewater Leaks The bill requires wastewater facilities to provide a power outage contingency plan and to develop an assessment, repair and replacement plan that complies with DEP rules to be adopted on this subject.
- Monetary Penalties The bill modifies current law requirements on administrative penalties assessed by DEP. Total administrative penalties increased from \$10,000 to \$50,000. Wastewater violation penalties are included under the defined administrative penalties. These penalties increased by 50%: from \$1,000 to \$2,000 and \$2,000 to \$4,000, respectively.
- **Bottled Water** The bill requires DEP to conduct a study on the bottled water industry in Florida and specify the subjects to be addressed in the study. The results of the study must be submitted to the governor and legislature by June 2021.

- **Legal Standing** The bill prohibits local governments from recognizing or granting certain legal rights to the natural environment (e.g., granting legal standing to waterbodies) or granting enforcement of such rights to persons or political subdivision.
- Reuse of Reclaimed Water The bill directs DEP to develop rules by December 2020 based on the Potable Reuse Commission's 2020 report for advancing a potable reuse framework in Florida.

Effective date: July 1, 2020, except as otherwise provided.

Transportation

Essential State Infrastructure CS/SB 7018 (Infrastructure and Security)

The bill contains various provisions relating to state infrastructure, including provisions concerning emergency staging areas, utility permit applications for use of local government rights-of-way, plans for electronic vehicle charging stations on the State Highway System, and the use of certain agriculture lands subject to conservation easements for construction of linear facilities. It requires the Public Service Commission, in coordination with the Department of Transportation and the Department of Agriculture and Consumer Services, to develop and recommend a plan for the development of electric vehicle charging station infrastructure along the State Highway System. The bill expands the expedited permit requirements currently applicable to telecommunications providers to include permit applications by all utilities for use of the local government public road rights-of-way. It also allows owners of agricultural lands subject to a conservation easement to negotiate use of the land for a linear facility and related appurtenances. The bill directs DOT to plan, design and construct staging areas for emergencies on the turnpike system.

Sent to Governor May 26, 2020; Action Required by June 10, 2020.

Effective date: July 1, 2020.

Infrastructure Regulation CS/CS/HB 1095 (Fitzenhagen)

The bill amends the Underground Facility Damage Prevention and Safety Act. The purpose of the Act is to identify and locate underground facilities before an excavation or demolition. The Act authorizes a free-access notification system, Sunshine 811. The bill amends the Act by expanding the list of entities that may issue citations for violations of the Act to include the state fire marshal and municipal and county fire chiefs. It increases the maximum civil penalty for certain violations of the Act that involve an underground pipe or facility transporting hazardous materials regulated by the federal Pipeline and Hazardous Material Safety Administration and provides for 80 percent of the civil penalty to be distributed to the entity that issued the citation.

Effective date: July 1, 2020.

Transportation Network Companies CS/ CS/HB 1039 (Rommel)

The bill allows certain motor vehicles compliant with the Americans for Disabilities Act, limousines, and luxury for-hire vehicles to operate as a Transportation Network Company vehicle and allows for-hire vehicle owners to operate as a Transportation Network Company. It provides that regulation of such vehicles is preempted to the state. In addition, it authorizes Transportation Network Company drivers to contract for the installation of digital advertising devices on their vehicles and provides requirements for the use and display of such devices. It preempts the regulation of such devices to the state. Effective date: upon becoming law.

Electric Bicycles CS/CS/HB 971 (Grant, M.)

The bill addresses regulation of the operation of electric bicycles (e-bikes). It removes e-bikes from the current law definition of bicycle and creates a three-tiered classification system. It creates regulations governing the operation of e-bikes and provides that an e-bike or an operator of an e-bike must be afforded all the rights and privileges, and be subject to all the duties, of a bicycle or bicycle operator. The bill authorizes an e-bike to operate where bicycles are allowed including, but not limited to, streets, highways, roadways, shoulders and bicycle lanes. Local governments are authorized to regulate the operation of e-bikes in the prescribed areas and may prohibit or restrict the operation of e-bikes on the local government's bicycle paths, multiuse paths, and trail networks. It provides that e-bikes and their operators are not subject to provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. Effective date: July 1, 2020.

Public Safety

Public Nuisances CS/CS/HB 625 (Newton)

The bill amends current law relating to public nuisance properties. The bill:

- o Allows a sheriff to sue in the name of the state to enjoin a nuisance.
- Reduces the number of occasions a location must be used by a criminal gang, criminal gang members, or associates before the location is declared a public nuisance from two or more occasions to one or more occasions.
- o Increases a defendant's notice period when nuisance abatement and enjoinment is sought, requiring a written notice demanding nuisance abatement within 10 days.
- Provides that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft or robbery by sudden snatching is a public nuisance and may be abated or enjoined.
- Expands incidents for which a place or premises may be declared a nuisance and enjoined by a local administrative board to include two or more specified violent felony offenses in a six-month period.
- o Provides that a rental property that is declared a public nuisance based upon the previously described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

Effective date: July 1, 2020.

Public Records Exemption/Disaster Recovery Assistance CS/SB 966 (Gainer)

The bill provides a public records exemption for property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

Sent to Governor on June 3, 2020; Action due by June 18, 2020.

Public Records & Meetings Exemption/911, E911, or Public Safety Radio Communication System

CS/CS/SB 1060 (Thurston)

The bill provides that certain plans and geographical maps relating to 911, E911, or public safety radio communication structures or facilities owned by an agency are confidential and exempt from public records disclosure. It also provides that any portion of a meeting that would reveal such confidential and exempt information is exempted from the public meetings law. The bill authorizes an agency to disclose information to another governmental entity if necessary for the entity to perform its duties, a licensed architect, engineer or contractor who is performing work on or related to the communications infrastructure system, or upon a showing of good cause to a court.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2020-13, Laws of Florida.

Alert Systems in Public Schools CS/CS/SB 70 (Book)

The bill requires public schools, including charter schools, to implement a mobile panic alert system beginning with the 2021-22 school year, capable of connecting various emergency services technologies to ensure real time coordination between multiple first responder agencies. It requires the Department of Education to develop a competitive solicitation to contract for a mobile panic alert system that may be used by each school district.

Effective date: July 1, 2020.

Security in Trial Court Facilities CS/HB 131 (McClain)

The bill requires each county sheriff to coordinate with the county commission and the chief judge of the judicial circuit to develop a comprehensive security plan for trial court facilities. It clarifies that sheriffs, their deputies, employees and contractors are officers of the court when providing security for court facilities.

Effective date: July 1, 2020.

Emergency Sheltering of Persons with Pets CS/HB 705 (Killebrew)

The bill requires counties that maintain designated shelters to designate a shelter that can accommodate persons with pets. It also requires the Department of Education to assist the Division of Emergency Management in determining strategies for the evacuation of persons with pets for the shelter component of the state comprehensive emergency management plan.

Effective date: July 1, 2020.

Bills that Died

Sovereign Immunity – Claims Bills SB 1302 (Flores)

Would have increased the statutory limits on liability for tort claims against state and local governments to \$500,000, indexed for inflation, and authorized claim settlement without action from Legislature.

Public Records Litigation
 SB 162 (Perry); HB 195 (Rodrigues)

Would have prohibited public agencies from filing declaratory judgment action to clarify public records requests or authorize the release of public records.

Bert Harris

SB 1766 (Growth Management) Lee; HB 519 (Private Property Rights) Grant

Would have created a presumption that settlement offers protected the public interest; Defined the time of imposition of exactions (for purposes of Bert Harris actions) as the time at which the property owner must comply with the prohibited exaction; Provided that property owners did not have to formally apply for a development permit if they believed it would be a waste of resources; Included language automatically applying settlement agreement terms to similarly situated properties.

County Attorney Public Records Exemption SB 248 (Hooper); HB 63 (Maggard)

Would have created a public records exemption for home addresses and other information of county attorneys and assistant county attorneys.

Legal Notice

HB 7 (Fine); SB 1340 (Gruters)

Would have created alternative public notice process that allowed notice to be provided digitally and by mail rather than by publication in a newspaper of general circulation.

Vacation Rentals

HB 1011 (Fischer); SB 1128 (Diaz)

Would have preempted the regulation of vacation rentals to the Department of Business and Professional Regulation.

Communications Services Tax SB 1174 (Hutson); HB 701 (Fischer)

Would have restructured the collection of Communication Services Tax, limiting the local option portion of the tax.

Questions?

Laura Youmans Legislative Counsel lyoumans@fl-counties.com (850)294-1838

2020 Legislative Update

Rebecca A. O'Hara, Deputy General Counsel Florida League of Cities, Tallahassee

rohara@flcities.com 850-222-9684

Laura Youmans, Legislative Counsel Florida Association of Counties, Tallahassee

 $\frac{lyoumans@fl-counties.com}{850-922-4300}$

Copies of bills from the 2020 Legislative Session may be obtained from Online Sunshine at www.leg.state.fl.us. Click onto either the House or Senate link (we find using the Senate system easier even for retrieving House bills). To obtain a copy of a bill passed by the legislature, copy only the ENROLLED version of the bill, which is typically identified as the "ER" version. The bill's legislative history will indicate what action the governor has taken on the bill, if any, as of June 6, 2020.

Agriculture & Environment

Environmental Enforcement CS/CS/HB 1091 (Fine)

The bill increases penalties by 50% for violations of numerous state environmental laws, including laws relating to pollution of groundwater and surface water, litter, coral reefs, aquatic preserves and solid waste. For certain violations, the bill provides that each day a violation occurs shall constitute a separate offense. In addition, it specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment. The bill also encourages counties and municipalities to establish an evaluation and rehabilitation program for "sanitary sewer laterals" on residential and commercial properties to identify and reduce extraneous flow from leaking laterals. A sanitary sewer lateral is a pipe that connects an individual property to the public sewer line. The bill specifies contents of the program, including the establishment of a publicly accessible database to store information concerning properties where a defective lateral has been identified. Also, the bill requires sellers to real property, prior to executing a contract for sale, to disclose to prospective purchasers any known defects in the properties' sanitary sewer lateral.

Effective date: July 1, 2020.

Environmental Resource Management CS/CS/SB 712 (Mayfield)

The bill amends various statutes relating to water quality improvements, including septic systems, basin management action plans, stormwater management systems, land application of biosolids, sanitary sewer overflows, and wastewater project grants.

- Septic Tanks The bill transfers regulation of septic tanks from the Department of Health to the Department of Environmental Protection (DEP) and directs DEP to develop rules for the location of septic tanks to prevent groundwater and surface water contamination and to protect public health. The bill establishes a septic tank technical advisory committee within DEP (the committee's authorization expires August 2022) to submit recommendations for advanced nutrient removal technologies and other regulatory matters. It requires local governments to develop septic tank remediation programs within a Basin Management Action Plan (BMAP) if DEP determines septic tanks are contributing at least 20 percent of the nutrient pollution within a basin or if DEP determines remediation is necessary to achieve the Total Maximum Daily Load (TMDL). The plan must identify projects necessary to reduce nutrient loads, include an inventory of existing septic tanks, identify septic tanks that will be connected to central sewer, replaced or upgraded, and include estimated costs to implement projects. Remediation plans must be adopted as part of a BMAP no later than July 2025.
- Stormwater The bill directs the DEP and water management districts to initiate rulemaking to update stormwater design criteria by January 2021. It directs the agencies, as part of the rulemaking, to address low-impact design best management practices and design criteria to increase nutrient removal and measures for consistent application of the net improvement performance standard to ensure significant reductions of pollutant loadings. The bill also directs DEP to evaluate performance data relating to stormwater "self-certification" and to recommend improvements to the program to the legislature. DEP and the Department of Economic Opportunity, with local government cooperation, are charged with developing a model stormwater management program that will include model ordinances that target nutrient reduction and green infrastructure.
- BMAPs The bill requires a BMAP to include a wastewater plan if DEP determines wastewater treatment facilities are contributing more than 20% of nutrient pollution or if deemed necessary to achieve the nutrient total maximum daily load (TMDL) for the BMAP. The wastewater plan is to be developed by each responsible local government, and the plan must address the facility upgrades or changes necessary to meet TMDL requirements. The wastewater plan must include a timeline for projects and estimated costs, and the plan must be adopted by July 2025. The bill prohibits DEP from requiring a higher cost project option for a wastewater plan if a lower cost option would achieve the same load reductions. The bill also requires DEP to submit a report to the legislature by July 2021 evaluating the costs of all septic system and wastewater treatment projects identified in BMAPs and identifying funding plans for the projects on a five-year basis. Also, the bill requires DEP to submit a report to the legislature by July 2021 assessing the water quality monitoring being conducted for each BMAP that is subject to nutrient load reductions.
- Agriculture The bill requires the Department of Agriculture and Consumer Services (DACS) to collect fertilizer and nutrient records from producers enrolled in the agricultural best management practices program and provide such records to DEP. It requires DACS to conduct onsite inspections of enrollees every two years. The bill also authorizes the creation of a "cooperative agricultural regional water quality improvement element" for agricultural nonpoint sources as part of a basin management action plan under specified conditions and establishes qualifications for participating in the element.

- Wastewater Grants The bill establishes a wastewater grant program in DEP to provide a 50% match for specified projects intended to reduce nutrient loads and requires DEP to identify projects that shall receive priority funding.
- **Biosolids** The bill directs DEP to adopt rules for biosolids and requires the rules to be ratified by the legislature. It specifies conditions for new biosolid land application permits or renewals of existing permits after July 2020, including limitations on the application on soils where certain water table conditions exist and a requirement to be enrolled in the DACS best management practices program. The bill requires all permits to meet the requirements of the biosolids rules to be adopted by DEP no later than two years after the effective date of such rules. It provides that local governments with biosolids ordinances adopted before November 2019 may retain those ordinances until repealed.
- Sanitary Sewer Overflows/Wastewater Leaks The bill requires wastewater facilities to provide a power outage contingency plan and to develop an assessment, repair and replacement plan that complies with DEP rules to be adopted on this subject. The plans shall be reported to DEP and must include expenditures taken for assessment, repair and replacement. A wastewater facility's substantial compliance with these planning and reporting requirements may be evidence for mitigating applicable DEP environmental penalties. Also, a facility may receive a 10-year operating permit if it is meeting the goals of its action plan. The bill requires wastewater facilities to provide annual reports to DEP detailing revenues and expenditures as prescribed by DEP rule, and a facility's substantial compliance with this requirement may be evidence for mitigating DEP penalties. The bill requires DEP to submit an annual report to the legislature detailing all facilities that experienced sanitary sewer overflows over the reporting period.
- Additional Agency Reports and Rulemaking The bill requires DEP to report by July 2020 the status of upgrades by specified wastewater utilities that are required to meet advanced treatment standards under current law, and it also requires DEP to submit cost estimates for wastewater facility and septic system remediation projects to the Office of Economic and Demographic Research beginning July 2022. EDR is required to include these cost estimates in its annual water resources assessment.
- Monetary Penalties The bill modifies current law requirements on administrative penalties assessed by DEP. Total administrative penalties increased from \$10,000 to \$50,000. Wastewater violation penalties are included under the defined administrative penalties. These penalties increased by 50%: from \$1,000 to \$2,000 and \$2,000 to \$4,000, respectively.
- **Bottled Water** The bill requires DEP to conduct a study on the bottled water industry in Florida and specify the subjects to be addressed in the study. The results of the study must be submitted to the governor and legislature by June 2021.
- Water Management District Annual Reports The bill requires water management
 districts to submit a copy of their annual reports to the Office of Economic and
 Demographic Research and requires the reports to include, in the listing of projects to
 implement a BMAP, any projects converting septic systems to sewer or to enhanced
 nutrient-reducing systems.
- **Legal Standing** The bill prohibits local governments from recognizing or granting certain legal rights to the natural environment (e.g., granting legal standing to waterbodies) or granting enforcement of such rights to persons or political subdivision.

• Reuse of Reclaimed Water – The bill directs DEP to develop rules by December 2020 based on the Potable Reuse Commission's 2020 report for advancing a potable reuse framework in Florida. The rules must address contaminants of emerging concern and meet or exceed drinking water quality standards.

Effective date: July 1, 2020, except as otherwise provided.

Recycling/Environmental Regulation CS/HB 73 (Overdorf)

The bill requires contracts between local governments and vendors, as well as requests for proposals or other solicitations, for the collection, transport and processing of residential recycling materials include provisions to define and reduce levels of contamination in the materials collected. Specifically, the contracts or solicitations must identify strategies and obligations of the local government to reduce contamination, procedures for identifying, procedures for managing and rejecting contaminated materials, strategies for education and enforcement, and a definition of the term "contaminated recyclable material" that is appropriate for the local community. The bill specifies that a collector, transporter or processor is not required to collect, transport or process contaminated recyclable material, except pursuant to the terms of an executed contract. The bill's requirements apply only to contracts executed or renewed after October 1, 2020. Also, the bill clarifies an exemption in current law from state environmental permitting requirements for various projects by specifying that local governments may not require a person to provide additional verification from the Department of Environmental Protection of entitlement to such an exemption. The bill also modifies an existing state permit exemption for the replacement and repair of existing docks and piers by specifying the replacement or repair must be "within 5 feet of the same location and no larger in size" and that no additional aquatic resources may be adversely and permanently impacted by such replacement or repair.

Effective date: July 1, 2020.

Sent to Governor June 3, 2020 Action due by June 18, 2020.

Florida Drug and Cosmetic Act SB 172 (Bradley)

The bill preempts the regulation of over-the-counter proprietary drugs or cosmetics (includes sunscreen) to the state.

Effective date: July 1, 2020.

Public Financing of Construction Projects CS/CS/SB 178 (Rodriguez)

The bill requires public entities that commission or manage a construction project within the coastal building zone using funds appropriated from the state to conduct a sea-level impact projection (SLIP) study before commencing construction. The study must be submitted to the Department of Environmental Protection (DEP) and published on the agency's website before commencing construction. The bill requires the DEP to develop rules establishing standards for conducting a SLIP study and specifies required components to be addressed in the rules. Also,

DEP must approve and publish copies of all SLIP studies for at least 10 years. The bill authorizes DEP to bring a civil action to seek injunctive relief to cease construction or seek recovery of state funds expended on a coastal structure if construction commences without complying with requirements for the SLIP study and review.

Effective date: July 1, 2020.

Fish and Wildlife Activities CS/CS/CS/SB 1414 (Mayfield)

The bill expands the current law prohibition on the harassment of hunters, trappers or fishers to include harassment on any public lands, public waters, or publicly or privately-owned wildlife and fish management areas. The bill also prohibits the sale, importing or possession of green iguanas or tegu lizards, with specified exceptions.

Effective date: July 1, 2020.

Construction Materials Mining Activities CS/HB 1047 (Avila)

The bill creates a monitoring and reporting pilot program for the use of explosives within the Division of State Fire Marshal to monitor and report blasts from the use of explosives for construction materials mining activities in Miami-Dade County. It requires written notice to the State Fire Marshal of the use of an explosive for mining activities in Miami-Dade County before the detonation of the explosive.

Effective date: October 1, 2020.

Aquatic Preserves

CS/CS/HB 1061 (Massullo)

The bill creates the Nature Coast Aquatic Preserve (an area of the coastal Big Bend region of Florida that includes Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla counties) and specifies the boundaries of the preserve.

Effective date: July 1, 2020.

Ethics & Elections

Prohibition Against Abuse of Public Position HB 7009 (Committee on Public Integrity & Ethics)

The bill reenacts provisions of the Florida Code of Ethics for Public Officers and Employees that provide penalties for violations of the statute. Re-enactment of the provision makes the statutory penalties applicable to Article II, section 8(h)(2) of the Florida Constitution, adopted by voters in the 2018 general election. This new provision prohibits a public officer or public employee from abusing her or her public office to obtain a disproportionate benefit. Rules recently enacted by the Florida Commission on Ethics implement this provision. The rule defines "disproportionate

benefit" as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her duties. The rule describes the requisite intent for finding a violation of this provision if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption or result from the act or omission which is inconsistent with the proper performance of his or her public duties.

Effective date: December 31, 2020.

Government Accountability CS/SB 1466 (Baxley)

The bill excludes certain acts or omissions by board members or employees of special districts (Ch. 189, F.S.) or community development districts (Ch. 190, F.S) from being considered abuse of public position under Article II, section 8(h)(2) of the Florida Constitution if such acts or omissions are authorized under specified provisions of the Florida Code of Ethics for Public Officers and Employees (including exemptions in sections 112.313(7),(12), (15), or (16), F.S. and section 112.3143, F.S.). The bill modifies current reporting requirements for information on a special district's website by allowing a district to satisfy the required posting of its most recent audit report by linking to the report maintained on the Auditor General's website. It removes the current law requirement for online posting of a special district's public facilities report and any meeting or workshop materials.

Effective date: July 1, 2020.

Constitutional Amendments Proposed by Initiative CS/CS/CS/SB 1794 (Hutson)

The bill modifies the requirements and processes for amending the Florida Constitution by citizen initiative, including as follows: increasing the geographic diversity and number of petition signatures that must be verified; expanding the scope of review by the Florida Supreme Court to include the facial validity of the proposal under the U.S. Constitution; creating a cause of action for citizens to challenge a petition circulator's registration; providing a 2-year window for signature validity; amending provisions relating to signature verification costs and verification processes; and requiring the ballot to contain a statement on the proposal's fiscal impact. The bill's provisions apply to 2020 ballot initiatives, with specified limitations.

Effective date: April 8, 2020.

Approved by Governor, Ch. 2020-15, Laws of Florida

Voting Systems

CS/HB 1005 (Byrd)

The bill allows county canvassing boards and supervisors of elections to use automated tabulating equipment that is not part of the voting system to conduct both machine and manual recounts. It specifically allows for the counting of paper ballots or the digital imaging of ballots

and specifies that a canvassing board may compare the digital image to the corresponding paper ballot. The bill directs the Department of State to develop procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system. The bill also corrects a current law provision that may result in voting systems being tested for accuracy after the canvassing of vote-by-mail ballots has begun. It addresses this issue by requiring testing to occur at least 25 days before the commencement of early voting.

Effective date: January 1, 2021.

Finance & Taxation

Taxation

CS/HB 7097 (Ways and Means)

The bill is the comprehensive "tax package" for the 2020 legislative session, which includes several tax reductions and other tax-related modifications to current law of interest to local governments. The bill authorizes two sales tax holidays: a three-day back-to-school holiday and a seven-day disaster preparedness holiday. It requires any future levy of the Charter County and Regional Transportation System Sales Surtax have a duration of 30 years. The bill requires School Capital Outlay sales surtaxes approved in the future be proportionately shared with charter schools. It increases the population limit, under which a county is authorized to use its tourist development tax revenues for zoological parks, fishing piers and nature centers, from 750,000 to 950,000. The bill prohibits an owner of a public building from soliciting any payment for providing the allocation letter needed to receive a federal income tax deduction for energy-efficient construction.

The bill makes several changes relating to property taxes. It amends the requirements for hospitals to qualify for a charitable tax exemption. Non-profit hospitals will be required to document the value of charitable services they provide, and their current charity tax exemption will be limited to the value of that charity care. The bill exempts from property taxation vacant affordable housing units and units occupied by persons or families who met the qualifying income thresholds at the time they began their tenancy but whose income grew through the income thresholds. The bill also exempts from property taxation an affordable housing project owned by certain limited liability companies. It updates the qualifying operations for the deployed servicemember property tax exemption. The bill also amends provisions that address conflicts of interest for special magistrates and restricts information that may be mailed with the annual Truth in Millage (TRIM) notice.

Lastly, the bill includes provisions requested by the Department of Revenue designed to enhance its administration of state taxes and oversight of property taxation, including flexibility in property tax noticing requirements during declared states of emergency and an extension of the deadline for property owners affected by Hurricane Michael to begin rebuilding and to retain their prior assessment limitation. The estimated fiscal impact of the bill to local governments in fiscal year 2020-21 is \$10.8 million.

Effective July 1, 2020, except as otherwise provided. Approved by Governor, Ch. 2020-10, Laws of Florida.

Constitutional Amendment: Homestead Property Tax Increased Portability Period HJR 369 (Roth)

The Joint Resolution proposes an amendment to the Florida Constitution to increase the period, from two to three years, when accrued Save-Our-Homes benefits may be transferred from a prior homestead to a new homestead.

Effective date: January 1, 2021, if approved by voters in the 2020 general election.

Homestead Property Tax Increased Portability Period HB 371 (Roth)

The bill will amend current law to implement the constitutional amendment proposed in HJR 369 (summarized above), if HJR 369 is approved by voters in the 2020 general election.

Effective date: January 1, 2021, if HJR 369 is approved by voters in the 2020 general election.

Ad Valorem Tax Discount for Surviving Spouse of Certain Deceased Veterans HJR 877 (Killebrew)

The Joint Resolution proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds legal title to the homestead and permanently resides there.

Effective date: January 1, 2021, if approved by voters in the 2020 general election.

Ad Valorem Tax Discount for Surviving Spouse of Certain Deceased Veterans HB 879 (Killebrew)

The bill will amend current law to implement the constitutional amendment proposed in HJR 877 (summarized above), if HJR 877 is approved by voters in the 2020 general election.

Effective date: Upon the effective date of the constitutional amendment proposed by HJR 877.

Transfer of Tax Exemption for Veterans CS/CS/HB 1249 (Sullivan)

The bill allows veterans who are honorably discharged with a service-connected total and permanent disability to receive a property tax refund of the ad valorem taxes paid for a newly acquired property, prorated as of the date of the transfer, under specified conditions.

General Government

Broadband Internet Service CS/HB 969 (Drake)

The bill designates the Department of Economic Opportunity (DEO) as lead state agency to facilitate expansion of broadband internet service in the state and creates the Office of Broadband within the agency for the purpose of developing, marketing and promoting broadband internet services. It directs DEO to create a strategic plan for increasing broadband service, to build local technology planning teams in coordination with local stakeholders, including local governments, and to encourage the use of broadband service in underserved areas through grant programs. The bill allocates \$5 million of the funds transferred to Florida's Turnpike Enterprise for the Multiuse Corridors of Regional Economic Significance (M-CORES) program to be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor.

Effective date: July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Public Procurement of Services CS/CS/HB 441 (DiCeglie)

The bill increases the maximum limit for continuing contracts covered by the Consultants' Competitive Negotiation Act from an estimated per-project construction cost of \$2 million to \$4 million. The bill also increases the maximum limit for procuring a study using a continuing contract from \$200,000 per study to \$500,000.

Effective date: July 1, 2020.

Towing and Immobilizing Vehicles and Vessels CS/CS/HB 133 (McClain)

The bill requires counties and allows municipalities to establish maximum rates for the towing or immobilization of vessels, as well as vehicles. It prohibits counties and municipalities from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or towing businesses. The prohibition does not apply to the levying of a business tax or the imposition of an administrative fee on the owner of a vehicle to recover the cost of enforcement, which may be collected by the authorized wrecker operator or towing business and remitted to the local government after it is collected. The bill exempts charter counties with towing or immobilization licensing, regulatory, or enforcement programs as of January 1, 2020, from the prohibition on imposing a fee or charge on an authorized wrecker operator or a towing business. The bill also prohibits counties and municipalities from adopting or enforcing ordinances that impose fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator. It provides that a wrecker operator who recovers, removes and stores a vehicle or vessel must have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a local government. The bill requires tow-away zone notices be placed within 10 feet from the road instead of within 5 feet from the public right-of-way line.

Effective date: October 1, 2020.

Verification of Employment Eligibility CS/CS/CS/SB 664 (Lee)

The bill requires all public employers and their contractors and subcontractors to register and use the E-Verify system to verify the work authorization status of all newly hired employees beginning January 1, 2021. E-Verify is a free, online system through which an employer may confirm that a new hire is authorized to work in the U.S. A public employer, contractor or subcontractor may not enter into a contract unless each party registers with and uses the E-Verify system. The bill requires a party to a public contract to terminate the contract if it believes in good faith that another party is employing an unauthorized alien or is not registered with and using E-Verify. It specifies that this termination is not a breach of contract, however, a contractor whose contract is terminated on this basis is liable for any additional costs incurred by the public employer resulting from the termination. In addition, an entity receiving economic development incentives awarded by the Department of Economic Opportunity after July 1, 2020, must prove it is using the E-Verify. Finally, the bill requires private employers, beginning January 1, 2021, to use the E-Verify system for new employees or contract employees or to verify their eligibility using the United States Citizenship and Immigration Services' Employment Eligibility Verification Form (I-9).

Effective date: July 1, 2020.

Fire Prevention and Control SB 1092 (Bean)

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program within the Division of State Fire Marshal. The matching grant will provide financial assistance to help fire departments procure equipment, supplies and educational training materials designed to mitigate exposure to hazardous, cancer-causing chemicals. The bill authorizes the State Fire Marshal to adopt rules and procedures to administer the program, including for the approval of applications and development of need-based criteria. The bill includes a \$250,000 appropriation for implementation.

Effective date: July 1, 2020.

Florida Retirement System Employer Contribution Rates HB 5007 (Appropriations Committee)

The bill revises the required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System. The total combined employer contributions estimated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2020-2021 will increase by approximately \$404.6 million above the contributions paid in Fiscal Year 2019-2020.

Deregulation of Professions and Occupations CS/HB 1193 (Ingoglia)

The bill is entitled the Occupational Freedom and Opportunity Act. It removes or reduces licensing and training requirements for various professions, including hair braiders, hair and body wrappers, boxing timekeepers and announcers, architects, interior designers, geologists, contractors, engineers and others. The bill preempts the licensing of mobile food dispensing vehicles (food trucks) to the Department of Business and Professional Regulation (DBPR). It specifies that a local government may not: require a separate license, registration, or permit beyond those established by DBPR; require a separate fee beyond those established by DBPR as a condition for mobile food dispensing; or prohibit mobile food dispensing vehicles from operating within the entirety of the local entity's jurisdiction. Additionally, the bill reduces the number of members on the Florida Building Commission, which effectively eliminates the authority of the Florida League of Cities and the Florida Association of Counties to recommend a list of candidates for consideration to the Florida Building Commission.

Effective date: July 1, 2020.

Peer-to-peer Support for First Responders CS/CS/HB 573 (Casello)

The bill provides confidentiality for peer support communications between a first responder and a first responder peer. The term "first responder" is defined to include law enforcement officers, firefighters, emergency medical technicians, paramedics, or 911 public safety telecommunicators. The bill defines a peer support communication as oral, electronic or written communications between a first responder and a first responder peer. The communication must be made with a mutual expectation of confidentiality and for the purpose of discussing physical or emotional issues associated with the first responder's employment. Under the bill, a first responder peer is a first responder who is not a health care practitioner, who has experience providing physical or emotional support to first responders and who has been designated by the first responder's employing agency to provide peer support and has received training to do so. The bill generally prohibits the disclosure of a first responder's peer support communication, subject to specified exceptions. In addition, the bill amends the Law Enforcement Officers' Bill of Rights by revising the definitions of "law enforcement officer" and "correctional officer" to include officers employed part time and by specifying the 180-day period for initiating disciplinary action applies regardless of the origin of a complaint (internal or external). Finally, the bill authorizes an agency head to request an investigator from a separate agency to investigate when there is a conflict of interest or the employing agency does not have an investigator with enough training.

Disability Retirement Benefits SB 936 (Gainer)

The bill authorizes a Florida Retirement System member who is receiving care at a federal Veterans' Health Administration facility to provide certification by two licensed physicians employed by the facility as proof of total and permanent disability, regardless of the state in which the physicians are licensed.

Effective date: July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Economic Development CS/SB 426 (Montford)

The bill amends the operations and funding requirements of the Regional Rural Development Grants Program and the Rural Infrastructure Fund. Specifically, the bill:

- Requires recipients of a Regional Rural Development Grant to serve or be located within a rural area of opportunity.
- Reduces the percentage of grant funds from the Regional Rural Development Grants Program that must be matched with non-state funds from 100 percent to 25 percent.
- Specifies that regional economic development organizations may use Regional Rural Development Grant funds to build their professional capacity and provide technical assistance.
- Increases the amount of infrastructure project costs that grants from the Rural Infrastructure Fund may be used for from 30 percent to 50 percent of a project's total cost.
- Clarifies that eligible infrastructure costs for the Rural Infrastructure Fund include costs associated with improving access to broadband Internet service.
- Establishes certain contract and public notice requirements.

The bill also revises the responsibilities of divisions within the Department of Economic Opportunity. It requires the Executive Director or designee to serve on the board of the Florida Development Finance Corporation (state board). It revises certain language related to the operation and purpose of CareerSource Florida, Inc. It provides the state board with powers and authority previously held by CareerSource Florida and requires the state board to design the workforce development strategy for the state, to be approved by the governor. The bill authorizes the department to consult with the state board to issue certain technical assistance letters. It authorizes a chief elected official for a local workforce board to remove certain persons from the board for cause. The bill transfers numerous programs from CareerSource to the state board or DEO.

Sent to Governor June 3, 2020; Action due by June 18. Effective date: July 1, 2020.

Visit Florida Reauthorization SB 362 (Hooper)

The bill revises the scheduled repeal of Visit Florida from July 1, 2020, to October 1, 2023.

Effective date: April 8, 2020.

Approved by Governor, Ch. 2020-16, Laws of Florida.

Public Nuisances

CS/CS/HB 625 (Newton)

The bill amends current law relating to public nuisance properties. The bill:

- Allows a sheriff to sue in the name of the state to enjoin a nuisance.
- Reduces the number of occasions a location must be used by a criminal gang, criminal
 gang members, or associates before the location is declared a public nuisance from two or
 more occasions to one or more occasions.
- Increases a defendant's notice period when nuisance abatement and enjoinment is sought, requiring a written notice demanding nuisance abatement within 10 days.
- Specifies requirements for the written notice.
- Requires, if the nuisance is not abated after the first written notice, a second written notice demanding abatement within 15 days, or a longer period if the defendant sends a written response containing specific allegations.
- Provides that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft or robbery by sudden snatching is a public nuisance and may be abated or enjoined.
- Expands incidents for which a place or premises may be declared a nuisance and enjoined by a local administrative board to include two or more specified violent felony offenses in a six-month period.
- Provides that a rental property that is declared a public nuisance based upon the previously described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

Effective date: July 1, 2020.

Fireworks

CS/CS/CS/SB 140 (Hutson)

The bill creates an exemption allowing for the use of fireworks on three designated holidays: New Year's Day (January 1), Independence Day (July 4) and New Year's Eve (December 31). The bill maintains current prohibitions on the opening of new fireworks permanent retail sales facilities and the issuance of permits for fireworks temporary retail sales facilities in greater numbers than were permitted in 2006 and preserves the enactment of certain local government ordinances on fireworks.

Effective date: April 8, 2020.

Approved by Governor, Ch. 2020-11, Laws of Florida

Local Government Public Construction Works CS/CS/HB 279 (Smith, D.)

The bill revises requirements for estimating the projected cost of a public construction work when a local government decides it is in its best interests to use its own services, employees and equipment instead of competitively bidding the project (projects exceeding \$300,000 or exceeding \$75,000 for electrical work). Under the bill, the estimated cost formula must include employee compensation and benefits, the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, other direct costs, and an additional factor of 20 percent for management, overhead, and other indirect costs. In addition, the bill requires local governments to consider the same formula when determining the estimated cost of road and bridge construction projects performed with proceeds from the constitutional gas tax. The bill also requires a local government to list all other governmental entities that may have additional permits or fees generated by the project when issuing a bidding document. Lastly, it requires a local government constructing a public building using its own services, employees and equipment to create a report summarizing the project and to review the reports annually. The reports are subject to inspection by the Auditor General as part of his or her audits of local governments.

Effective date: July 1, 2020.

Public Construction/Retainage CS/HB 101 (Andrade)

"Retainage" refers to the amount that a government entity may withhold from payment for construction services to the contractor during the construction process. Under current law, local governments may withhold up to 10% of retainage for the first half of a construction project and up to 5% on the last half. The bill reduces the amount of retainage to 5% that a local government may retain across an entire construction project. The bill's provisions do not apply to any contract entered, pending approval, or advertised by a local government entity, on or before October 1, 2020.

Effective date: October 1, 2020.

Infrastructure Regulation CS/CS/HB 1095 (Fitzenhagen)

The bill amends the Underground Facility Damage Prevention and Safety Act. The purpose of the Act is to identify and locate underground facilities before an excavation or demolition. The Act authorizes a free-access notification system, Sunshine 811. The bill amends the Act by expanding the list of entities that may issue citations for violations of the Act to include the state fire marshal and municipal and county fire chiefs. It increases the maximum civil penalty for certain violations of the Act that involve an underground pipe or facility transporting hazardous materials regulated by the federal Pipeline and Hazardous Material Safety Administration and provides for 80 percent of the civil penalty to be distributed to the entity that issued the citation. The bill establishes a civil penalty for knowingly removing or damaging a permanent marker placed to identify the location of an underground facility. It requires excavators and underground facility operators to transmit reports of incidents that involve high-priority subsurface installations for investigation by the state fire marshal and issuance of a civil penalty for a

violation found to the proximate cause of the incident. Portions of this civil penalty must be distributed between Sunshine 811 and the state fire marshal (to fund programs that assist fire departments with equipment, supplies, and training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals). The bill requires Sunshine 811 to review reports made to the state fire marshal and other complaints of alleged violations of the Act, identify issues and make recommendations to the governor and legislature. Lastly, the bill imposes terms limits on the State Office of Public Counsel, providing a person appointed to this position may not serve more than 12 consecutive years.

Effective date: July 1, 2020.

Local Government Efficiency Task Force HB 5003 (Appropriations Committee)

HB 5003 is the implementing bill for the 2020-21 General Appropriations Act. It contains provisions establishing the Local Government Efficiency Task Force within the legislature to review the governance structure and function of local governments and make recommendations on any changes that may be necessary to make such governments more efficient. It specifies the Task Force shall consist of six members with the governor, the Senate president, and speaker of the House of Representatives each appointing two members. It directs the Task Force to convene its first meeting by November 15, 2020 and authorizes it to conduct meetings in person or by electronic means. The bill directs the Task Force to submit a report to the governor and legislature by June 1, 2021.

Effective date: July 1, 2020.

Homelessness

HB 163 (Altman)

The bill aligns state requirements for the coordination of issues relating to homelessness by the Office of Homelessness in the Department of Children and Families with requirements of the federal Department of Housing and Urban Development. It requires each Continuum of Care lead agency to create a continuum of care plan that implements a housing crisis response system to prevent and end homelessness in the catchment area. It also requires the Office of Homelessness to align its catchment areas with federal catchment areas. The bill increases the amount of Challenge Grant funds each lead agency may receive annually from \$500,000 to \$750,000 and reduces the amount of matching funds or in-kind support from 100 percent to 25 percent. In addition, it amends current law provisions relating to the Rapid ReHousing and Housing First approaches to housing assistance.

Effective date: July 1, 2020.

Sent to Governor June 3, 2020; Action due by June 18, 2020.

Florida Commission on Human Relations CS/HB 255 (Antone)

The bill amends several provisions of law relating to the Florida Commission on Human Relations, including the Florida Civil Rights Act and the Florida Whistle-blower Act. It

specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act and provides that if the Commission fails to determine reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as claims that receive a determination of reasonable cause. In addition, the Commission is required to promptly notify an individual of the Commission's failure to determine reasonable cause and inform the individual of their options. The one-year period for filing an action begins to run on the date the Commission certifies the notice was mailed. The bill aligns the time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission. Specifically, the bill requires the Commission to respond within five working days after receiving a complaint (rather than three working days), it deletes language requiring the Commission to further notify a complainant that their complaint was received, amends the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint, standardizes the times before the Commission must terminate an investigation to 35 days, and shortens the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission to 21 days.

Effective date: July 1, 2020.

Housing Discrimination SB 374 (Rouson)

The bill extinguishes discriminatory restrictions from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. In addition, the bill clarifies that under the Fair Housing Act a victim of housing discrimination is not required to exhaust administrative remedies before filing a civil action.

Effective date: Upon becoming law.

County Boundaries SB 716 (Mayfield)

The bill alters the boundary lines of Indian River County and St. Lucie County to move a .65-acre parcel from St. Lucie County to Indian River County.

Effective date: Upon becoming law. Sent to Governor May 26, 2020

Sale or Surplus State-Owned Lands SB 1714 (Bradley)

The bill removes a requirement that state universities and Florida College System institutions be offered to lease a building or parcel of state-owned land before the same is offered to a local government or private party.

Effective date: July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Land Use & Growth Management

Growth Management CS/CS/SB 410 (Perry)

The bill amends various sections of law relating to growth management. The bill requires all cities and counties to adopt by July 1, 2023 (or by the date of its next proposed comprehensive plan amendment, whichever is earlier), a new mandatory element in their comprehensive plans that addresses the protection of private property rights. It prohibits a county, after January 1, 2020, from adopting a comprehensive plan, land development regulation, or another form of restriction that limits the use of property located within a municipality, unless the municipality adopts such land use policies through its own ordinances, or that limits a municipality from deciding the land uses, density, or intensity allowed on lands annexed into a municipality (these prohibitions do not apply to charter counties with a population exceeding 750,000). The bill prohibits a municipality from annexing an area within another municipal jurisdiction without consent of the other municipal jurisdiction. The bill provides that any newly incorporated municipalities having a comprehensive plan effective after January 1, 2019, must incorporate development orders existing before the plan's effective date. It specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property. The bill authorizes agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances. Finally, the bill extends the permit approval timeframes required in the Advanced Wireless Deployment Act to permit applications by all utilities in city and county rights-of-way.

Effective date: July 1, 2020.

Impact Fees

CS/CS/CS/SB 1066 (Gruters)

The bill prohibits the application of a new or increased impact fee to any pending permit application, unless the result is to decrease the total impact fees or mitigation costs imposed on an applicant. It provides that impact fee credits are assignable and transferable at any time after their establishment within the same impact fee zone or impact fee district, or an adjoining zone or district within the same local jurisdiction, that receives benefits from the improvement or contribution that generated the credits.

Effective date: July 1, 2020.

Community Affairs

CS/CS/CS/HB 1339 (Yarborough)

The bill makes various changes relating to community development zoning, impact fees, affordable housing, and mobile homes and parks. Notable changes made by the bill include the following:

• Allows a local government to approve the development of affordable housing on a parcel zoned for residential, commercial or industrial use.

- Removes the requirement that a local government first make a finding that an affordable housing shortage exists within its jurisdiction prior to adopting an ordinance to allow accessory dwelling units in an area zoned for single-family residential use.
- Requires the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services.
- Requires reporting on annual expenditures for affordable housing in reports of economic status information to the Office of Economic and Demographic Research.
- Establishes biannual regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.
- Requires a municipality to fully offset costs to a developer if an affordable housing "linkage fee" is assessed for a residential or mixed-use residential development.
- Provides that a building official may not audit a private inspector more than four times a month.
- Permits a mobile home park damaged or destroyed by natural forces to be rebuilt on the same site with the same density as was approved or built before being damaged or destroyed.
- Revises criteria and various reporting and distribution requirements pertaining to the State Housing Initiatives Partnership and State Apartment Incentive Loan program.

Effective date: July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Recreational Vehicle Parks CS/CS/HB 343 (Fetterhoff)

The bill revises various requirements relating to recreational vehicle (RV) parks. It provides the Department of Health is the exclusive regulatory and permitting authority for sanitary and permitting standards and operational issues for RV parks, mobile home parks, lodging parks, and recreational camps. Relevant to local governments, the bill allows an RV park to be rebuilt after a natural disaster to the same density standards.

Effective date: July 1, 2020.

Special Neighborhood Improvement Districts HB 1009 (Newton)

The bill increases the number of members that may serve on special Neighborhood Improvement District boards from three members to three, five or seven members and increases member terms from three to four-year staggered terms. It requires members to be landowners, rather than residents, in the proposed area who are subject to property taxes. The number of board members must be specified in the ordinance creating the district.

Effective date: July 1, 2020.

Community Planning CS/SB 1398 (Flores)

The bill authorizes the use of communications media technology for board meetings of Regional Planning Councils that cover three or more counties. A voting member who appears via real-time communications media technology that is broadcast publicly at the meeting location may be counted toward the meeting's quorum requirement if at least one-third of the voting members are physically present at the meeting location. It requires the Department of Economic Opportunity to give preference to certain small counties and municipalities located near a proposed multi-use corridor interchange when selecting applicants for Community Planning Technical Assistance Grants.

Effective date: July 1, 2020.

Public Records & Public Meetings

Public Records Exemption – Email Addresses/Tax Notices SB 7004 (Finance and Tax)

The bill maintains the current public record exemption for taxpayer email addresses held by tax collectors for certain tax notice purposes.

Effective date: October 1, 2020.

Public Records/Site-Specific Location Information Threatened & Endangered Species CS/HB 549 (Overdorf)

The bill provides that site-specific location information concerning a federally designated endangered or threatened species, or a state-designated species held by an agency is exempt from public records requirements. The exemption does not apply to animals in captivity.

Effective date: July 1, 2020.

Public Records Exemption/Disaster Recovery Assistance CS/SB 966 (Gainer)

The bill provides a public records exemption for property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

Sent to Governor on June 3, 2020; Action due by June 18. Effective date: July 1, 2020.

Public Records & Meetings Exemption/911, E911, or Public Safety Radio Communication System

CS/CS/SB 1060 (Thurston)

The bill provides that certain plans and geographical maps relating to 911, E911, or public safety radio communication structures or facilities owned by an agency are confidential and exempt from public records disclosure. It also provides that any portion of a meeting that would reveal such confidential and exempt information is exempted from the public meetings law. The bill authorizes an agency to disclose information to another governmental entity if necessary for the entity to perform its duties, a licensed architect, engineer or contractor who is performing work on or related to the communications infrastructure system, or upon a showing of good cause to a court.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2020-13, Laws of Florida.

Public Safety & Courts

Substance Abuse Services CS/CS/SB 1120 (Harrell)

The bill addresses individuals who have been disqualified for employment with substance abuse service providers following a failed background screening. The bill requires the Department of Children and Families to provide exemptions from employment disqualification for persons who have committed specified offenses.

Sent to Governor June 3, 2020; Action due June 18, 2020.

Effective date: July 1, 2020.

Law Enforcement Vehicles CS/SB 476 (Hooper)

The bill provides that community associations may not prohibit a law enforcement officer who is an owner, tenant, guest, or invitee of an owner from parking his or her law enforcement vehicle in an area where the unit owner or his or her guest otherwise has a right to park.

Effective date: February 21, 2020.

Approved by Governor, Ch. 2020-5, Laws of Florida

Emergency Reporting CS/CS/SB 538 (Diaz)

The bill directs the State Watch Office within the Division of Emergency Management to maintain a list of emergency-related reportable incidents. The list must include, but is not limited to the following: major fire incidents; search and rescue operations; bomb threats; natural hazards and severe weather; public health and population protective actions; animal or agricultural events; environmental concerns; nuclear power plant events; major transportation events; major utility or infrastructure events; and certain military events. It requires a municipality or county to report such emergency incidents to the State Watch Office as soon as practicable following the initial response of the local government.

Effective date: July 1, 2020.

Alert Systems in Public Schools CS/CS/SB 70 (Book)

The bill requires public schools, including charter schools, to implement a mobile panic alert system beginning with the 2021-22 school year, capable of connecting various emergency services technologies to ensure real time coordination between multiple first responder agencies. It requires the Department of Education to develop a competitive solicitation to contract for a mobile panic alert system that may be used by each school district.

Effective date: July 1, 2020.

Subpoenas

CS/HB 103 (Gottlieb)

The bill provides that subpoena service on an out-of-state corporation is proper when served on a registered agent in Florida, as authorized by the state were process is to be served, or at a location routinely used to accept service, if the corporation is doing business in Florida through the Internet. It authorizes a subpoena applicant to petition a court to compel compliance through indirect criminal contempt and a daily fine for up to 60 days.

Effective date: July 1, 2020.

Sent to Governor June 3, 2020 Action due by June 18, 2020.

Security in Trial Court Facilities CS/HB 131 (McClain)

The bill requires each county sheriff to coordinate with the county commission and the chief judge of the judicial circuit to develop a comprehensive security plan for trial court facilities. It clarifies that sheriffs, their deputies, employees and contractors are officers of the court when providing security for court facilities.

Effective date: July 1, 2020.

Exposure of Sexual Organs CS/HB 675 (Mercado)

The bill expedites the arrest process for indecent exposure by allowing an officer to make a warrantless arrest of a person the officer reasonably believes to have unlawfully exposed his or her sexual organs. It makes a second or subsequent indecent exposure a third-degree felony. The bill also clarifies that public nudity is unlawful only when it is vulgar or indecent and that nudity at any place provided or set apart for that purpose is lawful.

Effective date: October 1, 2020.

Emergency Sheltering of Persons with Pets CS/HB 705 (Killebrew)

The bill requires counties that maintain designated shelters to designate a shelter that can accommodate persons with pets. It also requires the Department of Education to assist the Division of Emergency Management in determining strategies for the evacuation of persons with pets for the shelter component of the state comprehensive emergency management plan.

Effective date: July 1, 2020.

Jury Service

CS/SB 738 (Harrell)

The bill requires that full-time students who meet specified criteria be excused from jury service upon request.

Effective date. July 1, 2020.

Nonopioid Alternatives

HB 0743 (Plakon)

The bill requires certain health care practitioners to inform a patient or the patient's representative of nonopioid alternatives before prescribing or ordering an opioid drug.

Effective date. July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Coverage for Air Ambulance Services

CS/CS/HB 747 (Williamson)

The bill requires health insurers and health maintenance organizations to provide reasonable reimbursement to air ambulance services for certain covered services.

Effective date: Upon becoming law.

Tobacco & Nicotine Products CS/CS/CS/SB 810 (Simmons)

The bill increases the minimum age for purchasing and possessing tobacco and nicotine products from 18 to 21 years of age. It expands the regulation of the retail sale of tobacco products by the Department of Business Regulation to include vaping devices and nicotine products. The bill prohibits the sale of flavored nicotine products to any person, regardless of age. It eliminates exemptions allowing underage persons in the military and emancipated minors to possess and purchase tobacco products.

Effective date: January 1, 2020.

Broward County CS/HB 989 (Jacobs)

The bill provides for the transfer of certain county-related functions and duties, including ex officio clerk of the board of county commissioners, county recorder, auditor, and custodian of county funds to the county government. It specifies the county auditor maintains power prescribed in the Broward County Charter, providing for an exception to general law and an interlocal agreement for the transfer of recorder functions and duties.

Effective date: Upon becoming law.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Police Vehicles CS/CS/SB 1508 (Taddeo)

The bill prohibits a person from knowingly selling, exchanging, or transferring a police vehicle without first removing any police markings from the vehicle. It requires law enforcement agencies to provide a letter of notification that police markings have been removed to the purchaser, customer, or transferee. It exempts sales between law enforcement agencies from these requirements. The bill defines "police markings" and provides penalties for violation.

Effective date: July 1, 2020.

Transportation

Essential State Infrastructure CS/SB 7018 (Infrastructure and Security)

The bill contains various provisions relating to state infrastructure, including provisions concerning emergency staging areas, utility permit applications for use of local government rights-of-way, plans for electronic vehicle charging stations on the State Highway System, and the use of certain agriculture lands subject to conservation easements for construction of linear facilities. It requires the Public Service Commission, in coordination with the Department of Transportation and the Department of Agriculture and Consumer Services, to develop and recommend a plan for the development of electric vehicle charging station infrastructure along the State Highway System. The bill expands the expedited permit requirements currently applicable to telecommunications providers to include permit applications by all utilities for use of the local government public road rights-of-way. It also allows owners of agricultural lands subject to a conservation easement to negotiate use of the land for a linear facility and related appurtenances. The bill directs DOT to plan, design and construct staging areas for emergencies on the turnpike system.

Effective date: July 1, 2020.

Sent to Governor May 26, 2020; Action due June 10, 2020.

Transportation Network Companies

CS/CS/HB 1039 (Rommel)

The bill allows certain motor vehicles compliant with the Americans for Disabilities Act, limousines, and luxury for-hire vehicles to operate as a Transportation Network Company vehicle and allows for-hire vehicle owners to operate as a Transportation Network Company. It provides that regulation of such vehicles is preempted to the state. In addition, it authorizes Transportation Network Company drivers to contract for the installation of digital advertising devices on their vehicles and provides requirements for the use and display of such devices. It preempts the regulation of such devices to the state.

Effective date: upon becoming law.

Commercial Service Airports CS/CS/HB 915 (Avila)

The bill contains provisions intended to enhance transparency and accountability for large-hub commercial service airports. The bill requires the Auditor General, at least once every seven years, to conduct operational and financial audits of the state's large-hub commercial service airports. The bill also requires the members of the governing bodies of large-hub commercial service airports to submit the more detailed financial disclosure (Form 6) to the Commission on Ethics. It requires annual ethics training for members of the governing body of commercial service airports. The governing body of each commercial service airport is required to establish and maintain a website containing specified information including meeting notices, agendas, approved budgets and certain documents submitted to the Federal Aviation Administration. The bill subjects commercial service airports to the requirements of chapter 287 for purchases of commodities or contractual services that exceed a threshold amount, including competitive bidding and governing body approval.

Effective date: October 1, 2020.

Electric Bicycles CS/CS/HB 971 (Grant, M.)

The bill addresses regulation of the operation of electric bicycles (e-bikes). It removes e-bikes from the current law definition of bicycle and creates a three-tiered classification system. It creates regulations governing the operation of e-bikes and provides that an e-bike or an operator of an e-bike must be afforded all the rights and privileges, and be subject to all the duties, of a bicycle or bicycle operator. The bill authorizes an e-bike to operate where bicycles are allowed including, but not limited to, streets, highways, roadways, shoulders and bicycle lanes. Local governments are authorized to regulate the operation of e-bikes in the prescribed areas and may prohibit or restrict the operation of e-bikes on the local government's bicycle paths, multiuse paths, and trail networks. It provides that e-bikes and their operators are not subject to provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

Effective date: July 1, 2020.

Drones

CS/HB 659 (Fischer)

The bill allows the use of a drone by a non-law enforcement employee of the Fish and Wildlife Conservation Commission or the Florida Forest Service for purposes of managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.

Effective date: July 1, 2020.

Florida Association of County Attorneys

Redistricting Commission Districts in 2021



Kurt Spitzer

<u>kurtspitzer@ksanet.net</u>

850-228-6212

Short Summary

Redistricting is the process by which the legislative body equalizes differences in the population of districts by making adjustments to district boundaries.

Redistricting # Reapportionment

Why?

Examination of the need to redistrict required by Florida Constitution and Chapter 124, FS, after each decennial census

Furthers the principal of "one person, one vote"

- 14th Amendment (1868)
- 15th Amendment (1870)
- Voting Rights Act (1965)

Todays Agenda

- 1. General Guidelines for Redistricting
- 2. Upcoming Challenges in Redistricting

1. General Guidelines

- Equal (almost) in population dominant criteria
- Don't dilute minority voting strength
- Follow census blocks
- Follow significant natural and man-made boundaries
- Follow boundaries of existing districts

General Guidelines

- Must be contiguous
- Should be as compact as possible
- Preserve communities of interest
- May consider party affiliation

General Guidelines

- Individual criteria and guidelines are balanced in concert with each other
- Use common sense

As equal in population as "possible" or "practicable"

- Examine need to adjust after each decennial census
- May adjust boundaries during any oddnumbered year

As equal in population as "possible" or "practicable"

Article VIII, section 1(e):

After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable.

As equal in population as "possible" or "practicable"

Chapter 124, FS:

(3) The board of county commissioners shall from time to time, fix the boundaries of the above districts so as to keep them as nearly equal in proportion to population as possible; provided, that changes made in the boundaries of county commissioner districts pursuant to this section shall be made only in odd-numbered years.

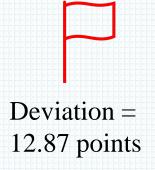
As equal in population as "possible" or "practicable"

- Absolute population equality is impossible.
 Target deviation from mean as small as possible...less than 3% over/under zero is good
- Population ≠ Registered Voters
- Two districts with population differences ≥ 10 percentage points raises red flag

As equal in population as "possible" or "practicable"

Two districts with population differences ≥ 10 percentage points raises red flag

District	Average	Actual	Actual	Percent		
#	Population	Population	Deviation	Deviation		
1	2,952	3,108	156	5.28%		
2	2,952	2 ,741	(211)	-7.15%		
3	2,952	3,066	114	3.85%		
4	2,952	3 ,113	161	5.45%		
5	2,952	2 ,733	(219)	-7.42%		



As equal in population as "possible" or "practicable"

Examples of possible exceptions to 10-point rule (with well-documented record and in concert with other criteria)

- To create minority influence or minority majority district
- To under populate high growth area of county

As equal in population as "possible" or "practicable"

Use Common Sense

Pop. for proposed districts

30,378 15,658

239,452 158,893 69,704 10,855

2.23%

Comparison of Plans (Total Population)

27,962 14,793 2,582 92.6% 3,622 2,416

213,455 142,717 61,213 9,525 89.1% 25,997 16,176

Dist 5

	Remains in same district				New in district				Formula Table						
Plan 5	Total	White	Black	Others	%	Total	White	Black	Others	%	Total	White	Black	Others	% Dev.
Dist 1	34,140	28,003	4,589	1,548	71.8%	13,439	11,615	1,263	561	28.2%	47,579	39,618	5,852	2,109	-0.65%
Dist 2	34,764	25,250	7,889	1,625	72.3%	13,312	9,945	2,793	574	27.7%	48,076	35,195	10,682	2,199	0.39%
Dist 3	22,354	3,607	17,919	828	46.9%	25,300	12,424	11,695	1,181	53.1%	47,654	16,031	29,614	2,009	-0.49%
Dist 4	38,190	30,090	6,626	1,474	79.2%	10,010	7,073	2,453	484	20.8%	48,200	37,163	9,079	1,958	0.65%
Dist 5	21,749	13,848	6,476	2,425	47.5%	26,194	17,038	8,001	155	54.6%	47,943	30,886	14,477	2,586	0.11%
	151,197	100,798	43,499	7,900	63.6%	88,255	58,095	26,205	2,955	36.9%	239,452	158,893	69,704	10,855	1.3 pts
Plan 1	Total	White	Black	Others	%	Total	White	Black	Others	%	Total	White	Black	Others	% Dev.
Dist 1	42,632	34,854	5,933	1,845	90.1%	4,691	4,052	377	262	9.9%	47,323	38,906	6,310	2,107	-1.18%
Dist 2	46,659	32,735	11,752	2,172	93.5%	3,249	1,925	1,162	162	6.5%	49,908	34,660	12,914	2,334	4.21%
Dist 3	34,887	11,221	22,212	1,454	76.1%	10,927	5,316	5,203	408	23.9%	45,814	16,537	27,415	1,862	-4.33%
Dist 4	43.940	35.945	6.523	1.472	92.6%	3.508	2.467	884	157	7.4%	47.448	38.412	7.407	1.629	-0.92%

865

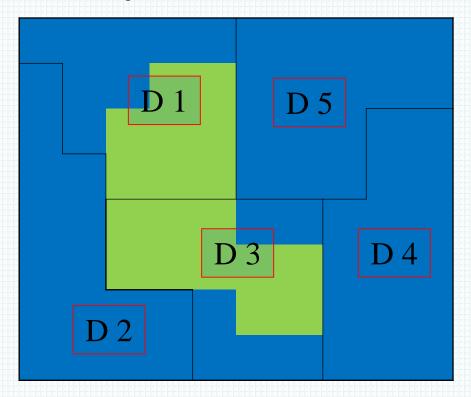
General Guidelines – Don't Dilute Minority Voting Strength

Packing – locating most of minority population into one district so as to dilute influence in other districts

Cracking – splitting minority population into two or more districts so as to dilute influence in all districts

General Guidelines – Don't Dilute Minority Voting Strength

Example County's electorate is 22.5% Green and 77.5% Blue. Below shows a relatively even distribution of blue and green electorate into five districts.



District	Blue %	Green %
1	50	50
2	100	0
3	60	40
4	100	0
5	100	0

General Guidelines – Don't Dilute Minority Voting Strength

Packing: - 4 blue, 1 green

D 1

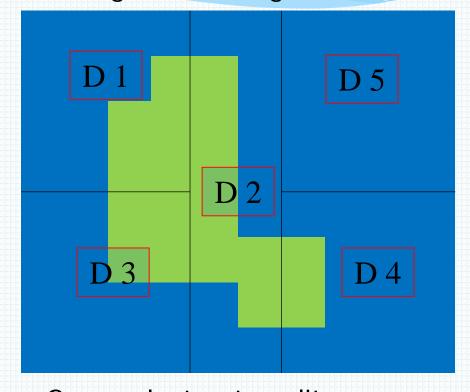
D 5

D 3

D 4

Green electorate concentrated in one district

Cracking: 4 blue, 1 green influence



Green electorate split among four districts

General Guidelines – Use Census Blocks

- Readily available
- Smallest unit of "building blocks"
- Presumed to be valid...but look for anomalies
- Total population v. 18+ years
- May be altered or supplemented with other sources of data but must document valid reasons why and how

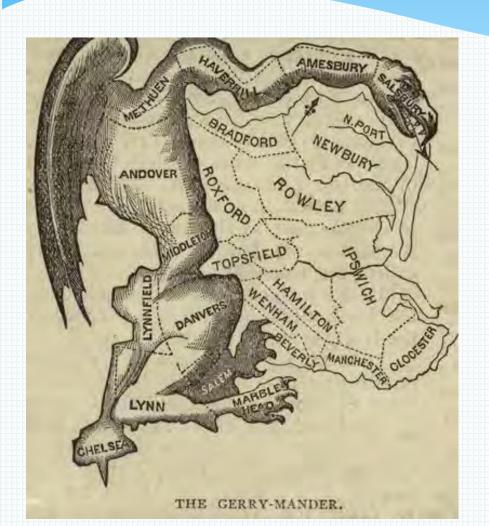
General Guidelines - Boundaries

- Follow major natural or man-made boundaries waterbodies, arterial roads, etc.
 - Easier to understand
 - Less disruptive to precincts
 - Coterminous with census blocks
- Follow existing district boundaries when possible
 - Easier to understand
 - Recognizes will of voters

General Guidelines - Boundaries

- Individual districts must be contiguous
 - Contiguity may be maintained via waterbody
- Attempt to keep communities of interest together
 - ✓ Neighborhoods/Cities
- Don't draw incumbents out of their district
- Avoid districts with "bizarre" shapes

General Guidelines - Boundaries

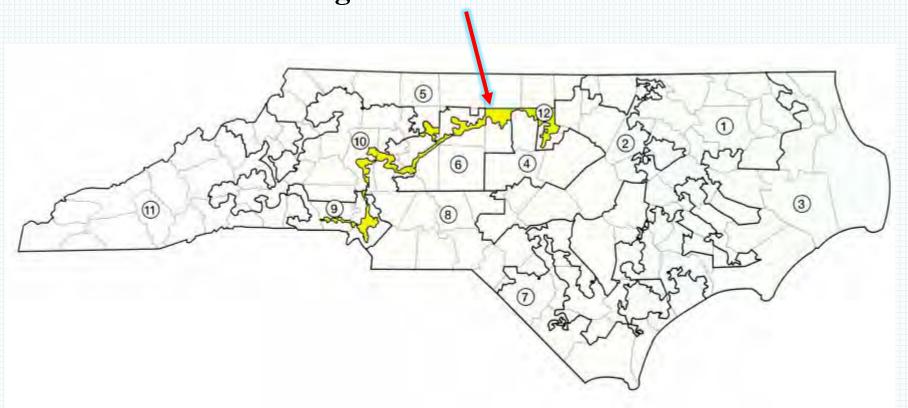


"Gerrymandering"

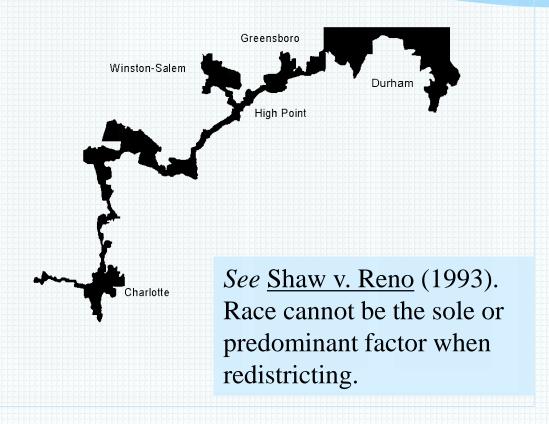
Gov. Elbridge Gerry

- 9th Governor of Massachusetts
- 5th Vice President of US

North Carolina Congressional District 12



North Carolina Congressional District 12



General Guidelines - Summary

- Equal (almost) in population
- Don't dilute minority voting strength
- Use census blocks
- Keep districts easy to understand, follow major boundaries and preserve communities of interest

General Guidelines - Summary

- It is impossible for any redistricting plan to attain 100% compliance with every criteria
- Individual criteria are balanced in concert with each other with population being the dominant criteria

Todays Agenda

- General Guidelines for Redistricting
- 2. Upcoming Challenges in Redistricting



2. Upcoming Challenges in Redistricting

- 2020 Census
- To count or not to count?
- Fair Districts Amendments
- What is a "minority" in the redistricting process?



Upcoming Challenges in Redistricting – 2020 Census

- First Census conducted in 1790 (US population = 3,929,214)
- 2020 Census administrative functions began in January 2019
- 2020 Census counting began in January
- Presumed to be correct but check for anomalies



Upcoming Challenges in Redistricting – 2020 Census

Date	Task
January 2020	Census begins counting remote Alaska
March	Paper instructions sent re: responding online
April 1	Census Day – snapshot of households
Mid-April	Paper Questionnaires mailed
April – June	Census Takers visit group quarters
May - August	Census Takers visit homes not yet responded
December 31	Reapportionment counts to Congress
March 31, 2021	Census Bureau delivers counts to states

Upcoming Challenges in Redistricting – 2020 Census

Date	Task
January 2020	Census begins counting remote Alaska • 1 st US COVID-19 case/travel ban
March	Paper instructions sent on responding online Census suspends field operations
April 1	Census Day – snapshot of households
Mid-April	Paper Questionnaires mailed
April – June	Census Takers visit group quarters • May: Field operations reinstated
May - August	Census Takers visit homes not yet responding
December 31 (?)	Reapportionment counts to Congress
March 31, 2021	Census Bureau delivers counts to states • New target – July 2021

Upcoming Challenges in Redistricting – Count Prison Pop?

- Florida (state & federal) prison population = 100,000+
- Impact especially significant in small counties when redistricting
- Census counts "people" without regard to age or voting status

Upcoming Challenges in Redistricting – Count Prison Pop?

- Florida AGO 2001-55 you must count prison population
- <u>Calvin v. Jefferson County</u> (1st DCA, ND Fla - March 19, 2016) - you may not count prison population
- Evenwel v. Abbott (US S/Ct April 4, 2016) a state may draw districts based on total population (not registered voters)

Upcoming Challenges in Redistricting – "Fair Districts"

 Section 20 (Standards for Congressional Districts) and 21 (Standards for Legislative Districts) added to Article III in 2010

Upcoming Challenges in Redistricting – "Fair Districts"

- (a) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
- (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

Upcoming Challenges in Redistricting – "Fair Districts"

- Amendments do not apply to cities or counties
- But are reasonable policies or criteria to follow at local level

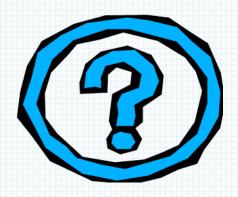
Upcoming Challenges in Redistricting – What is a "minority" when redistricting?

- VRA enacted during the height of the civil rights movement in 1965
- Enforces rights guaranteed by the 14th and 15th Amendments to the US Constitution
- Prohibits laws/policies that result in discrimination against racial or language minorities

Upcoming Challenges in Redistricting – What is a "minority" when redistricting?

- Is a non-Hispanic white community that is a minority of a jurisdiction's population afforded protections under 14th Amendment or VRA?
- TBD... See <u>Baroody v. City of Quincy</u>
 No. 4:20-cv-217-AW-MAF

Questions?



Kurt Spitzer kurtspitzer@ksanet.net 850-228-6212



Election Security and the County Canvassing Board

David H. Stafford
Escambia County Supervisor of Elections
June 11, 2020

Canvassing Board Composition

- County Court Judge (chair), Supervisor of Elections, Chair of Commission, Alternate County Court Judge, Alternate County Commissioner
- Substitutes, if above cannot serve:
 - County Judge Chief Judge appoints a qualified elector, not candidate or active participant in campaign
 - SOE Chair of BCC appoints a qualified elector, not candidate or active participant in campaign
 - BCC Chair BCC appoints another commissioner, or a qualified elector, not candidate or active participant in campaign
 - Substitutes Chief Judge appoints a qualified elector, not candidate or active participant in campaign

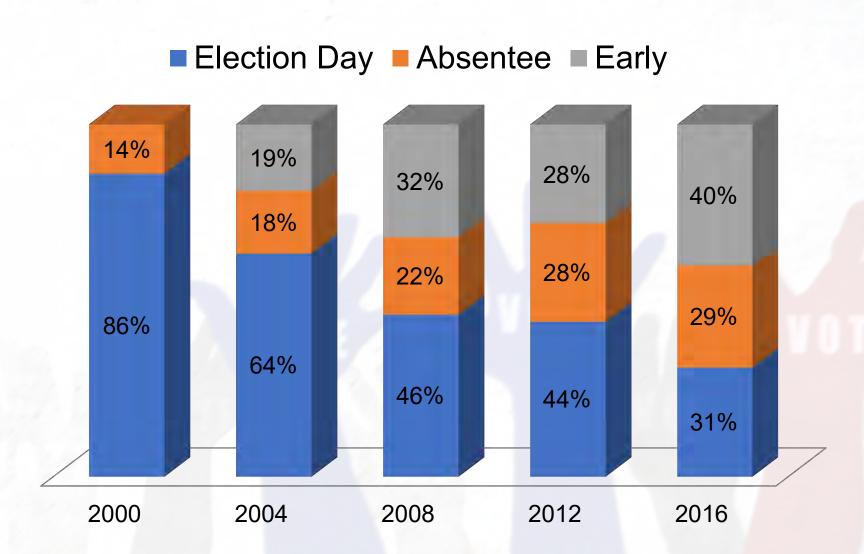
Duties and Responsibilities

- Testing of Voting Equipment
- Canvassing of Absentee Vote
- Canvassing Special Absentee for Certain Voters
- Canvassing of Ballots for Early Voting
- Canvassing Write-In Votes
- Canvassing State Write-In Ballots
- Canvassing Returns from the Polls
- Canvassing Provisional Ballots

Duties and Responsibilities

- Canvassing Special Provisional Ballots
- Submitting Preliminary Returns
- Submitting Unofficial Count
- Machine Recount
- Manual Recount
- Canvassing Ballots from UOCAVA Voters
- Certifying Returns
- Audit of Voting System
- Contest of Election

How Florida Votes



Intelligence Community Assessment January 6, 2017



Elections as Critical Infrastructure

- Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector – January 6, 2017
 - "I have determined that election infrastructure in this country should be designated as a subsector of the existing Government Facilities critical infrastructure sector. Given the vital role elections play in this country, it is clear that certain systems and assets of election infrastructure meet the definition of critical infrastructure, in fact and in law."

Elections as Critical Infrastructure



Elections Infrastructure Snapshot



56 States + DC/US Territories



3,140 Counties



6,932 Townships



9,000+ Jurisdictions

Elections Infrastructure Snapshot









PRIMARY ACTORS:







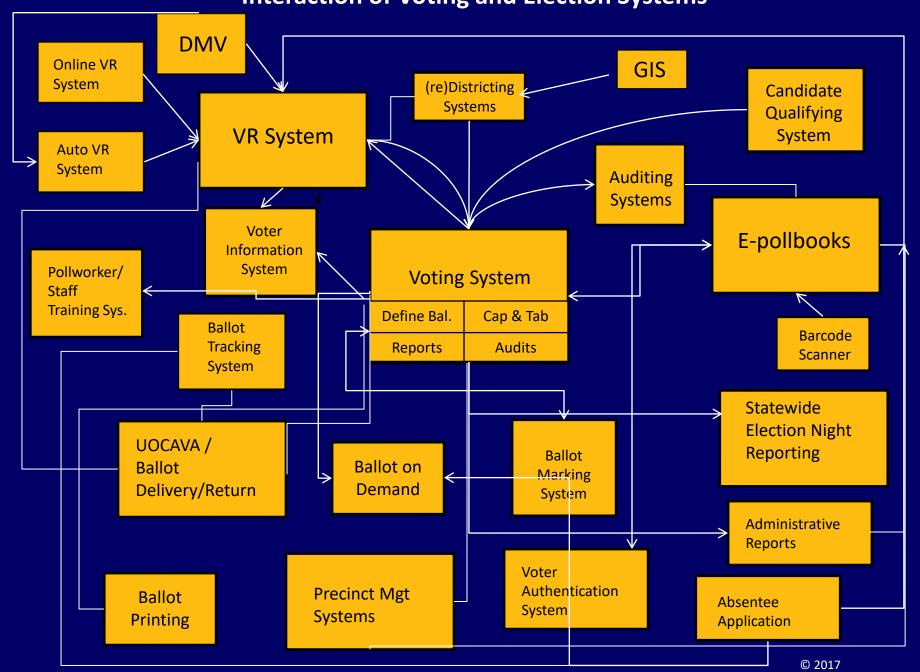








Interaction of Voting and Election Systems



What Happened in 2016?

- From Senate Intelligence Committee Report
 - "The Russian government directed extensive activity, beginning in at least 2014 and carrying into at least 2017, against U.S. election infrastructure at the state and local level. The Committee has seen no evidence that any votes were changed or that any voting machines were manipulated."
 - "In 2016, Russian operatives associated with the St. Petersburg-based Internet Research Agency (IRA) used social media to conduct an information warfare campaign designed to spread disinformation and societal division in the United States."

What Happened in 2016?

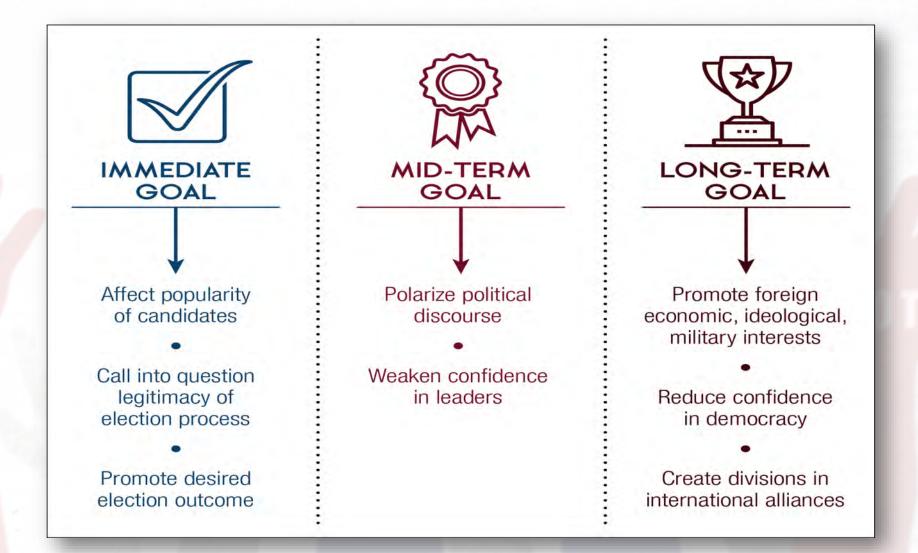
Senate Intelligence Committee Report

 Evidence of scanning of state election systems first appeared in the summer prior to the 2016 election. In mid-July 2016, Illinois discovered anomalous network activity, specifically a large increase in outbound data, on a Illinois Board of Elections' voter registry website. Working with Illinois, the FBI commenced an investigation. The attack resulted in data exfiltration from the voter registration database.

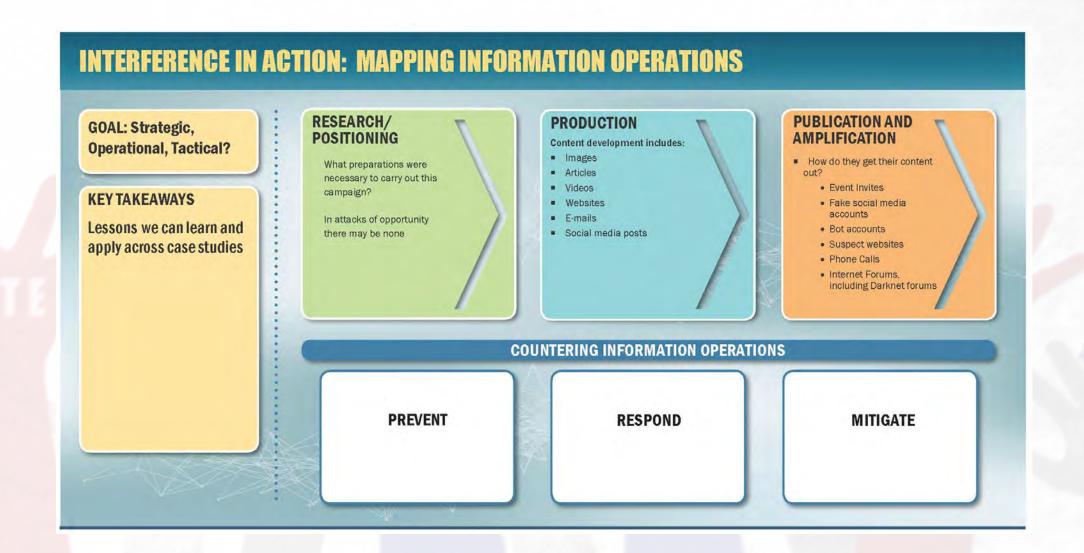
Mueller Report

 ...in November 2016, the GRU sent spearphishing emails to over 120 email accounts used by Florida county officials responsible for administering the 2016 U.S. election. We understand the FBI believes that this operation enabled the GRU to gain access to the network of at least one Florida county government.

Goals of Election Interference



Information Operations



Website Defacement





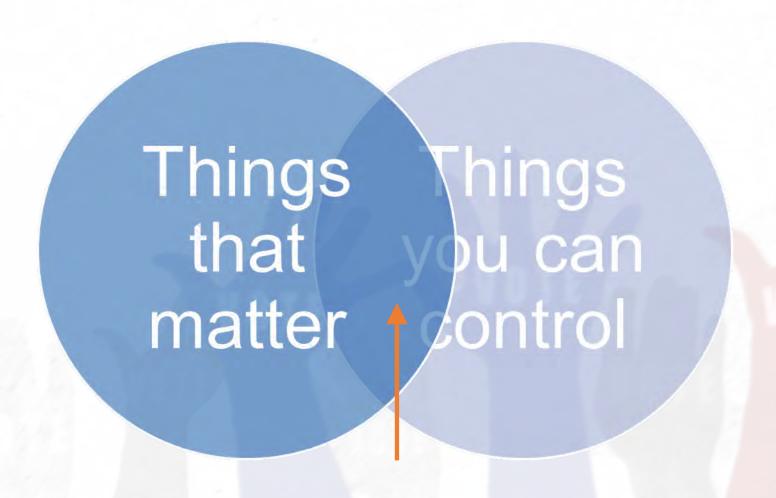
North Carolina's elections board provided this image to state lawmakers in a December 2017 presentation. . - State Board of Elections and Ethics Enforcement

Ransomware

- Ransomware is a type of <u>malicious software designed</u> to deny access to a computer systems or data until a ransom is paid.
- If ransom demands are not met, the system or encrypted data remains unavailable, or data may be deleted.
- In elections this could be used to deny access or delete Voter Registration and/or Vote Tabulation data.



Where Should We Focus?



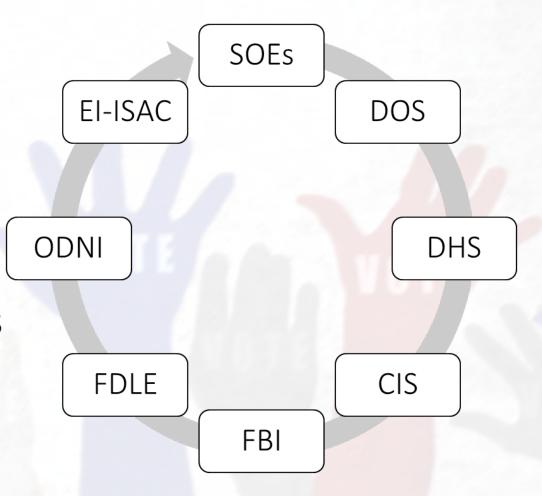
Florida is Leading the Way

- Voting is by paper ballots
- Voting machines not connected to the Internet
- Mandatory pre-election testing, open to public
- Mandatory post-election hand audits, open to public
- Florida requires additional testing and certification for voting equipment
- Unprecedented Election Security Initiative since 2017

Securing the Vote

Since 2017:

- EI-ISAC membership
- ALBERT sensors
- Federal and State grants
- DHS services
- Training and tabletop exercises
- State cybersecurity review
- State and federal partnerships



Training and Exercises

- UWF Center for Cybersecurity
 - Training for all Florida counties prior to 2018 elections
- National "Tabletop the Vote" 2018 and 2019
 - 44 states in 2018, 47 in 2019
 - Delivered via SVTC
- Florida Election Security Tabletop 2019
 - 180 participants: 67 counties, 3 vendors, state and federal partners
- National "Executive TTX" 2020
 - 44 states, 16 vendors, 11 Federal departments

Considerations for 2020

- Canvassing Boards are essential partners
- Unprecedented confluence of challenges
- Public perception and confidence as critical as security
- Prepare and exercise contingency plans
- Resist desire to share unconfirmed information too quickly
- Take care to use precise language
- Must know balance between public access and security
- Plan for litigation before, during, and after the election

Election Security Video

https://youtu.be/wbXO5821Slw



Questions



The ABCs of COLLECTIVE BARGAINING In the public sector

Cynthia Hall Assistant County Attorney Monroe County, Florida



What is a collective bargaining agreement?

"An unexpired collectivebargaining agreement is an executory contract."

NLRB v. Bildisco and Bildisco, 465 U.S. 512, 511 (1984)

NLRA

- 29 U.S.C. §§ 151-169 (from 1935)
- Sets up NLRB
- Lists unfair labor practices of employer and labor organizations
- Does not actually require written collective bargaining agreements!

Chapter 447, F.S., Part II

(Public Employees Relations Act)

- Defines the rights and obligations of public employers and employees
- 2 outcomes: reach agreement, or impasse
- Public employees are not permitted to strike (FS 447.505)

What must the agreement contain?

• F.S. 447.309(5):

"Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided for in applicable merit and civil service rules and regulations."

Other subjects of bargaining

• <u>Permissive</u>: Parties *may* bargain, but it is not an unfair labor practice not to bargain, and the parties cannot use the impasse procedure for them.

Example: Issues involving retirees.

• Illegal: Parties cannot bargain.

Example: Parties could not bargain away a right guaranteed by other state or federal laws — e.g., workers' compensation benefits.

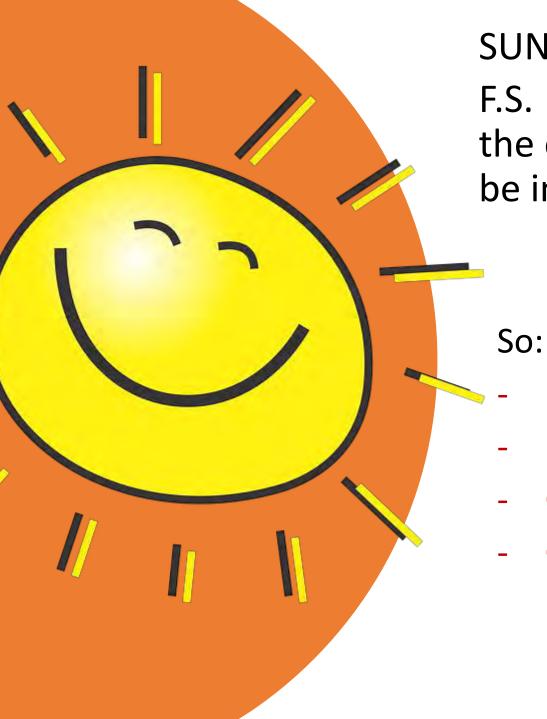
Florida Public Employees Relations Commission – Ch. 447, F.S.

F.S. 447.201: PERC was created "to assist in resolving disputes between public employees and public employers."

PERC:

- Hears claims for recognition by a union as a bargaining agent for a bargaining unit
- Resolves unfair labor practice disputes
- Hears petitions to decertify bargaining units
- Resolves impasses
- Hears Career Service and other appeals for State employees, also Veteran's Preference cases

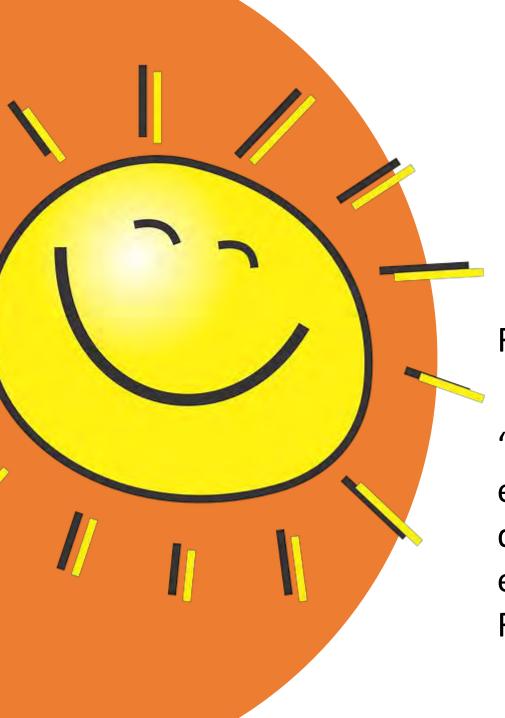
- PERC website: perc.myfloridal.com
- "A Practical Handbook on Florida's Public Employment Collective Bargaining Law"



SUNSHINE LAW CONSIDERATIONS:

F.S. 447.605(2): All negotiations between the employer and bargaining agent shall be in compliance with F.S. 286.011.

- **Notice**
- Minutes
- Open to the public
- Opportunity for public input?



F.S. 447.605(3):

"All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S."

Now what do you do?

-- Homework

- 1. Talk to your County Administrator, Budget Director -- find out how much money is available.
- 2. Collect all CBAs around the State for the same or similar unions.
- 3. Prepare your documents showing fiscal impact of offers the "spreadsheet"
- 4. Convene meeting of management team to discuss what offers you want to put on the table.
- 5. FS 447.309: You "shall" consult with the legislative body for the employer.



FS 447.309(1):

6. Look at impasse factors in FS 447.405.



FS 447.405 factors:

- Annual income of employees in question compared to income for others with same skills in that geographical area.
- 2. Annual income of employees in question compared to the income of employees of other governmental bodies of comparable size within the state.
- Public interest and welfare.
- 4. Comparison of those employees compared to other trades with respect to:
 - (a) Hazards of employment.
 - (b) Physical qualifications.
 - (c) Educational qualifications.
 - (d) Intellectual qualifications.
 - (e) Job training and skills.
 - (f) Retirement plans.
 - (g) Sick leave.
 - (h) Job security.
- 5. Availability of funds.

What do you do next?

- Sit down with the union. Start early negotiations often take 5-6 months!
- Talk.
- At the first meeting, set schedule for future sessions.
- Keep talking until you reach tentative agreement on all articles, or impasse (and then keep talking – there is a continuing duty to negotiate).

Three possible outcomes:

- 1. Reach tentative agreement.
- 2. No T/A, but no impasse maintain status quo.
- 3. Impasse on some or all articles.



Good news – you reached agreement! What next?

FS 447.309(1):

The agreement is not binding on the public employer until it has been ratified, both by the legislative body and the union members.



You didn't reach agreement.
What next?

Impasse: 2 step procedure

FS 447.403, 2 steps:

- Hearing on disputed articles in front of special magistrate, who issues a written recommendation.
- If either side does not accept the recommendations, in whole or in part:
 Matter goes to BOCC for hearing. Result: 1
 yr. CBA with issues agreed to by parties + impasse issues decided by BOCC.



Who is the bargaining team?

Management team:

Legal answer: FS 447.309 says "chief executive officer or his or her representative". FS 447.609: Any full-time employee or officer may represent the employer.

Practical answer: Spokesperson + dept. heads + HR

Union: Unless specified in the CBA, the bargaining team is anyone designated to be on the team.

Legal answer: FS 447.309 says "bargaining agent or its representatives"

Practical answer: Unless specified in the CBA, the bargaining team is the business agent + shop stewards or the E-board



2. Do I have to let my shop stewards use paid time to attend the bargaining session?

Yes. However, the employer can put a reasonable restriction on the number of people who can attend.



3. Can Union members meet with the Commissioners before and during negotiations?

Yes — until are at 2nd step in impasse. (Someone has declared impasse, you have had a hearing in front of a Special Magistrate (1st step) <u>and then</u> one party has rejected the recommendations of the Special Magistrate.) After that, BOCC becomes the body that will resolve the disputed impasse issues, so no ex parte communication by either side is allowed.

Are Commissioners required to meet with union personnel? No.



4. What if a union president shows up at public forum and wants to air his grievances?

The government can regulate, provided the rules are the same as applied to everyone else.

"In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. . . . The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983) (White, J.).



5. What happens when union leadership posts nasty comments about the Board on its union website?

Unfair labor practice?

- FS 447.501(2)(c): Union is prohibited from "failing to bargain collectively in good faith."
- But -- No unfair labor practice where hotel union sent delegations to businesses and homes of hotel patrons, posted on their social media platforms, and sent "cow pie valentines" to persuade them not to book rooms or trade shows at the hotel. 520 South Mich. Ave. Assoc. v. Unite Here Local 1, 760 F.3d 708 (7th Cir. 2014).



Nasty comments, continued –

Sections 7 and 8, NLRA:

- 29 U.S.C. §157 (Section 7, NLRA): Employees have the right to "engage in other concerted activities for the purpose of collective bargaining . . ."
- 29 U.S.C. §158 (Section 8, NLRA): It is an unfair labor practice for an employer to interfere with the rights in Section 7.
- Social media policies that do not allow comments critical of management practices have resulted in unfair labor practice charges.
- Triple Play Sports Bar, 361 NLRB No. 31 (Aug. 22, 2014) (Triple Play violated NLRA by terminating employees after profanitylaced Facebook discussion criticizing the employer).
- Employers can still regulate the use of employer resources (computers) and prohibit anything more than de minimis use on employer time.

Any questions?



hall-cynthia@monroecounty-fl.gov

Bryant Miller Olive

"Ins and Outs of Municipal Bonds"

The Florida Association of County Attorneys 2020
Continuing Legal
Education Program

June 11, 2020

Our name is easy to remember. Our work is hard to forget.

TABLE OF CONTENTS

- I. WHAT IS A MUNICIPAL BOND
- II. SUMMARY OF CLASSIFICATIONS OF MUNICIPAL BONDS
- III. PREREQUISITES TO ISSUANCE
- IV. BOND VALIDATION
- V. BOND REFERENDA MATTERS
- VI. STATE REPORTING AND DISCLOSURE REQUIREMENTS
- VII. ASSESSMENT VS. TAX VS. USER FEES VS. IMPACT FEES
- VIII. SPECIAL DISTRICTS
- IX. DISCLOSURE REQUIREMENTS
- X. POST ISSUANCE TAX COMPLIANCE
- XI. CURRENT EVENTS

I. A BRIEF HISTORY OF MUNICIPAL BONDS

- What is a Municipal Bond?
 - At its most basic form, a municipal bond or "muni bond" is a debt instrument issued by a governmental entity (an issuer) evidencing an obligation to pay.
 - Have likely existed in the U.S. since early 1800s.
 - The term muni bond is most often associated with bonds issued by the U.S. and its territories.
 - The primary thing that distinguishes municipal bonds from other debt obligations is the tax-exemption component.
 - The tax-exemption component has been the source of significant legislation and case law.

- Municipal debt obligations may be classified in several different ways. Under the laws of most states and under Florida law, two significant classifications of public debt are used:
 - General Obligation Bonds
 - Revenue Bonds

- General Obligation Bonds
 - 1. Security is the full faith and credit of an issuer with taxing power.
 - 2. Subject to the referendum requirement and may only be issued for "capital projects."
 - 3. A general description of the provisions of Florida law relating to the holding of a referendum election may be found in Chapter 100 and Chapter 101, Florida Statutes.
 - 4. Generally, second referendum is not required for bonds issued to refund or refinance bonds which were subject to the referendum if the refunding or refinancing results in a lower net average interest rate.
 - 5. Maturing <u>more</u> than 12 months (if less than 12 months don't need a referendum).

Revenue Bonds

- 1. Revenue bonds are debt obligations as to which: (i) the full faith and credit of an issuer with taxing power is <u>not</u> pledged, but are payable from specific sources of revenue; and (ii) do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service.
- 2. Generally, no voter approval is required under state law prior to issuance of such bonds.

Revenue Bonds:

- Examples include:
 - (i) bonds payable from utility revenues, such as water and sewer revenues; and (ii) bonds payable from various sources of non-ad valorem revenues, such as excise taxes, gas taxes or state revenue sharing moneys (e.g. Guaranteed Entitlement Revenues and the Local Government Half-Cent Sales Tax).
- "Covenant to Budget & Appropriate"
 - Secured by a covenant of the local government to budget and appropriate legally available non-ad valorem revenues for the payment of debt service.
 - Not secured by a specific lien upon or pledge of specific nonad valorem revenues.
 - Covenant is subject to the requirement that the local government pay for all essential governmental services.

Revenue Bonds:

- "Certificates of Participation" (a.k.a. "COPs")
 - Developed in the late 1980's and early 1990's by local governments searching for additional and innovative methods of financing local government projects.
 - Represent an undivided interest in lease payments from a governmental unit.
 - Local government enters into a lease agreement with a not-forprofit corporation.
 - The trustee sells interests in the lease agreement to outside investors
 - Outside investors hold a certificate representing the right to participate in the lease payments.
 - Lease is subject to appropriation each year.
 - Lease terms coincides with the fiscal year of the issuer, and if no appropriation is made, the lease terminates.
 - Lease may be payable from any revenues of the local government, including ad valorem taxes.

Revenue Bonds:

- Equipment Leases
 - Typically used for computer, vehicle and other equipment financings.
 - Annual lease payments are subject to appropriation and no revenue stream is pledged.
 - Similar to COPs (discussed above), however, on a smaller scale without the public issuance and sale of COPs.
 - Some form documents from vendors include a covenant to budget and appropriate the lease payments each year, which would make that particular transaction more akin to general revenue bonds.
 - Remedies should be limited to traditional lease remedies, such as return of property – foreclosure cannot be a remedy (without a referendum) due to the restrictions on a local government's ability to mortgage property or grant a security interest in property.

Revenue Bonds:

- Conduit Bonds
 - Broad category that includes conduit bonds issued by: (i) local Industrial Development Authorities; (ii) Housing Finance Authorities; (iii) Health Facility Authorities; and (iv) other governmental units on behalf of an underlying borrower.
 - May also be issued directly by cities and counties and some other governmental units.
 - Typically payable solely from revenues derived from loan, lease or installment sale payments with the private party utilizing the bond proceeds.
 - Specifically authorized by statue (e.g., Ch. 243 (Educational Facilities), Ch. 154 (Health Facilities), Ch. 159 Industrial Development, Housing Development, Research Development)).

Revenue Bonds:

- Community Redevelopment Agency/Tax Increment Bonds (a.k.a. "TIF Bonds")
 - Issued under Ch. 163 for purposes of community redevelopment.
 - Often payable from the "tax increment" or the difference between the assessed value of the property before and after the redevelopment project.
 - On September 18, 2008, the Florida Supreme Court released its much anticipated decision in <u>Strand v.</u> <u>Escambia County</u>, upholding the constitutionality of TIF Bonds without referendum approval.

- Revenue Bonds:
 - Special Assessment Bonds
 - Since special assessments do not constitute ad valorem taxation, bonds payable from special assessments on property specially benefitted from the improvements are considered revenue bonds.

- Constitutional & Florida Law Restrictions
 - Public Purpose
 - No Lending of Credit
 - No Mortgage
 - Extraterritorial Powers

Public Purpose

- Charter counties have all powers of local self-government not inconsistent with general law
- Non-Charter Counties have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact county ordinances not inconsistent with general or special law.
- What constitutes a public purpose has changed over the years. Great deference is paid to a legislative finding of public purpose. Generally, court will not overturn legislative finding of public purpose unless clearly erroneous.

No Lending of Credit

Art. VII, Sec. 10, Florida Constitution, prohibits municipal corporations from giving, lending or using their taxing power or credit to aid any corporation, association, partnership or person. State v. Miami Beach Redevelopment Agency, 392 So. 2d 875 (Fla. 1980) contains a detailed analysis of this constitutional provision and the public purpose test to be met before a municipality's credit may be pledged to a bond issue. The lending of credit test is closely related to the public purpose test described above.

No Mortgage

- Generally, local governments may not secure debt obligations with a mortgage on public property.
- This restriction on mortgages includes granting security interests in property, including purchase money security interests. This issue is raised particularly in the area of equipment and other leasing as discussed above, as well as installment sales. Under this rule, a local government with taxing power may not grant a security interest in public property, absent voter approval.
- This rule does not apply, however, to the pledging of a revenue stream to the repayment of debt.

Extraterritorial Powers

- Before issuing bonds to finance a project located outside of a country, care must be taken to confirm the issuer has the power to operate outside of its jurisdictional limits.
- Section 125.01(1)(p), Florida Statutes, provides that a county has the power to enter in to agreements with other government units within or outside the boundaries of the county for joint performance or for performance by one unit on behalf of the other for any of either agency's authorized functions.
- On April 18, 2019 the Supreme Court of Florida ruled on a extraterritorial powers case in Halifax Hospital Medical Center v. State, 278 So.3d 545 (Fla. 2019). Halifax (a special district) was found not to be authorized to undertake a project outside of its geographic boundaries notwithstanding its interlocal agreement with the City of Deltona.

- Statutory Authorization and Statutory Restrictions
 - Chapter 125 provides basic authority for counties to issue bonds typical revenue bonds and general obligation bonds.
- Other authority is contained in Chapter 132, 153 and 159, Florida Statutes.
 - Certificates of Participation
 - There are certain statutory provisions relating to the lease purchase of facilities for school districts (Sect. 235.056) and counties (Sect. 125.031).

- Charter and Ordinance Restrictions
 - In addition to constitutional and statutory restrictions, practitioners should be aware the local charters and ordinances may contain additional restrictions for issuance of debt (e.g., all bonds be signed by County Attorney or issuance of bonds secured by taxes).
 - Authorization of bonds by ordinance will not repeal any conflicting provisions of ordinances of local government.

Contractual Restrictions

- A review of possible contractual prohibitions should be made prior to the issuance of the bonds (e.g. "parity" provisions in outstanding bond documents regarding whether the debt sought to be issued may have equal lien status with the existing debt).
- In covenant to budget and appropriate transactions, an antidilution test may be present which provides that no debt will be issued unless non-ad valorem revenues are at certain levels.
- Other documentary provisions may include restrictions on use of revenues and consent procedures from credit enhancers or bondholders.
- Additional restrictions may also be found in contractual documents with vendors, credit providers and other contracting parties with local governments.

- Pledge and Lien on Revenues
 - Often times, local governments issue bonds payable from a specific revenue source.
 - In order to secure payment, the bond resolution or ordinance, authorizing the issuance of bonds typically provides for the creation of various funds and accounts to provide a tracking of the pledged revenues. These provisions also ensure the revenues are in trust funds. Security arrangements are particularly important to holders of revenue bonds, who cannot look to the ad valorem taxing power of the issuer for repayment.
 - Bondholders often require attorneys to provide a legal opinion to the effect that the security interest in revenues is valid and binding. Outside of the public arena, laws regarding the creation and perfection of security interests are contained in Article 9 of the Uniform Commercial Code.

- Pledge and Lien Revenues
 - In 2001, the Florida Legislature adopted revisions to Florida's uniform commercial code relating to secured transactions (Ch. 679). Under the rewritten code, transfers by governments and governmental units continue to remain exempt from the provisions of the uniform commercial code relating to secured transactions (§679.1091(4)(n)).
 - The creation of a pledge of revenues may be accomplished through a trustee or through the creation of trust funds and accounts. Most Florida statutes providing for issuance of bonds also include language regarding the validity of a pledge.

IV. BOND VALIDATION

- Chapter 75 provides for circuit court validation proceedings confirming the legality and authority for issuance of bonds, bonded debt, certificates of debt and matters related thereto, prior to the issuance of such obligations.
- The issuer files the validation action and seeks an order to show cause why the bonds should not be validated and the local state attorney defends the action.
- Case law also addresses validation of interlocal agreements under which a local government is obligated to make payments and lease purchase agreements.
- Issues to be considered in a validation proceeding include the validity of the bonds, or other obligations, the validity of any taxes, assessments or revenues which are pledged for the repayment of the bonds, the proceedings authorizing the issuance of the bonds and any remedies provided for their collection.

Collateral issues should not be considered.

V. BOND REFERENDA MATTERS

- Ch. 100 provides for specific procedures for bond referenda, but generally, procedures applicable to general elections are applicable to bond referenda.
- If a bond issue is defeated at referendum, no other referendum may be held with respect to such bonds for the same purpose for a period of 6 months.
- Ballot must include: (i) the amount of bonds to be issued; (ii) a statement as to the purpose for the bonds; (iii) and the rate of interest on the bonds (a statement that the interest rate shall not exceed the maximum rate permitted by law is sufficient).
- Notice of the bond referendum must be published in a newspaper of general circulation at least 30 days prior to the election, at least twice, once in the 5th week and once in the 3rd week prior to the week in which the election is to be held.
- Any taxpayer may bring a test suit within 60 days of the election to test the validity of the referendum. However, if the issuer institutes a bond validation proceeding, then any such taxpayer is bound to intervene in such validation proceeding. The court hearing on the bond validation proceeding is given exclusive jurisdiction to determine the validity of the referendum.

VI. STATE REPORTING AND DISCLOSURE REQUIREMENTS

- Public Sale vs. Negotiated Sale
 - Tale of Two "Notices of Sale"
 - "Notice of Sale" to the Market
 - Announces Impending Sale to Investing Public
 - "Notice of Sale" to the FL Division of Bond Finance
 - Informs DBF of Impending Sale (10 days prior)
- Bond Information Forms (Combined Form 2003/2004)
 - Filed with FL Division of Bond Finance ASAP after sale
- Purchaser's Disclosure Statement and Truth in Bonding
 - Executed and delivered bond purchaser at the time the purchase contract is entered into

- Assessments: Charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of funds.
 - Two requirements for the levy of special assessments: (1) the property must be a special benefit from the service provided or project constructed; and (2) the assessment must be fairly and reasonably apportioned among properties that receive the special benefit.
- If a special benefit fails to meet the Florida case law requirements of special benefit and fair apportionment applicable to their imposition, then the charges imposed are taxes.

- If a charge is a tax, it must be authorized by general law.
- Collection of the special assessment may be secured by a lien on the benefitted property, enforceable through foreclosure proceedings.
- Additionally, Sec. 197.3632 provides for the collection of non-ad valorem assessments by including these assessment on the annual tax bill.
- Enforcement proceedings applicable to taxes are then available for the enforcement of assessments, including sale of tax certificates.

- <u>User Fees</u>: Authorized by statute to be imposed directly by municipalities and charter counties and indirectly for non-charter counties through the use of municipal service taxing or benefit units for various governmental purposes.
 - User fees are payments for voluntarily purchased services which benefit the specific individual to the exclusion of non-feepayers.
 - Florida Supreme Court struck down a transportation utility fee, stating that such fee was in reality a tax because it sought to charge for a general government service (maintenance of public roads).
 - However, in 2001 the Court held that a mandatory reclaimed water "availability fee" was found not to be a tax, but a valid utility user fee even though the reclaimed water might not actually be utilized.

- Impact Fees: Fees imposed by local government to offset the cost of new development on existing facilities and are valid to the extent that the fees do not exceed a pro rata share of the reasonably anticipated costs of expansion, where expansion is reasonably required, and the use of the fees is limited to meeting the cost of expansion.
 - Local governments must show a reasonable connection between the need for additional capital facilities and the growth in the population generated by the development.
 - Local government must also demonstrate there is a reasonable connection between the expenditure of funds collected and the benefits accruing to the development.
 - Impact fees are generally imposed for water and sewer facilities, road facilities and parks and recreation facilities.
 - The Supreme Court has upheld impact fees for education facilities, however, seemed to retreat to a home rule power analysis, rather than comparing impact fees to user fees as in prior cases.
- <u>Payments in Lieu of Taxes</u>: Payments under a PILOT Agreement are imposed under proprietary powers of government, and not sovereign right and therefore are not invalid as taxes.

- Uniform Special District Accountability act of 1989 governs creation, dissolution, meeting notices, reporting, elections and other requirements for special districts.
- "Special District" means a local unit of special purposes, as opposed to general purpose government, within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.
- The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.
- The term does not include school districts, a community college district, a special improvement district created pursuant to Sect. 285.17, a municipal service taxing or benefit unit as specified in Sect. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

- "Dependent Special District" means a special district that meets at least one of the following criteria:
 - 1. The membership of its governing body is identical to that of the governing body of a single county or a single municipality;
 - 2. All members of its governing body are appointed by the governing body of a single county or a single municipality;
 - 3. During their unexpired terms, members of the special district's governing body are subject to removal by the governing body of a single county or a single municipality; or
 - 4. The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

- "Independent Special District" means a special district that is not a
 dependent special district as defined above. A district that includes
 more than one county is an independent special district.
- Special districts are now required to maintain an official website. The
 information required to be accessible on their website is listed in Section
 189.069, Florida Statutes. The agenda for a meeting and any available
 material for such meeting must be posed at least seven (7) days before
 the meeting.

- Bonds issued by special districts (other than Bonds approved by a referendum) must meet one of the following criteria:
 - 1. The bonds were rated in one of the highest four ratings by a nationally recognized rating service;
 - 2. The bonds were privately placed with or otherwise sold to accredited investors;
 - 3. The bonds were backed by a letter of credit from a bank, savings and loan association, or other creditworthy guarantor, or by bond insurance, guaranteeing payment of principal and interest on the bonds; or
 - 4. The bonds were accompanied by an independent financial advisory opinion stating that estimates of debt service coverage and probability of debt repayment are reasonable, which opinion was provided by an independent financial advisory, consulting, or accounting firm registered where professional registration is required by law and which is in good standing with the State and in conformance with all applicable professional standards for such opinions.

IX. DISCLOSURE REQUIREMENTS

- Disclosure Requirements:
 - Public Offerings/Private Placements
 - Public Offerings: Bonds offered through an underwriting by an investment banking firm acting on behalf of the government are referred to as "publicly offered." Publicly offered municipal bonds involve the preparation and distribution of offering materials (typically referred to as an official statement) to prospective purchasers of the bonds.
 - Private Placements: Unlike a public offering, a private placement typically involves the purchase of a single bond for the entire par amount of the issue by a financial institution which will hold the bond as security for the loan of the proceeds of the bond to the government.
 - Must be disclosed to investors if issuer has publically offered bonds

IX. DISCLOSURE REQUIREMENTS

Primary Disclosure

- Bonds of a local government which are publicly sold (by competitive bid or negotiated sale) are typically sold by an underwriter through the use of a disclosure document (usually an "official statement").
- The official statement includes a description of the terms of the bonds, the security for the bonds and financial information about the issuer and the source of payment (water and sewer revenues, sales tax, ad valorem taxes, etc).
- The official statement speaks only as of its date and must be complete and accurate as of its date in order to comply with the antifraud provisions of the federal securities laws.

Continuing Disclosure

• Over the course of time, as recently as 2019, the SEC has amended its Rule 15c2-12 requiring ongoing disclosure of annual information about the issuer and certain material events.

IX. DISCLOSURE REQUIREMENTS

- Additional and Voluntary Disclosures to the MSRB
 - The SEC has also given approval to the MSRB to accept additional types of filings on its Electronic Municipal Market Access (EMMA) website. Underwriters of municipal securities will be required to provide – and issuers will be able to provide voluntarily – information to assist investors and other market participants in assessing the availability of ongoing disclosures made by issuers through the EMMA website.

X. POST ISSUANCE COMPLIANCE

- The IRS is pushing for heightened compliance practices by issuers, most recently in 2012 by requiring issuers to certify on Form 8038 and Form 8038-G that they have written procedures in place to monitor and remediate any nonqualified tax-exempt bonds.
- In 2012, the IRS reported the results of a compliance check on governmental bond issuers. While a majority of issuers reported that they had written compliance procedures in place, the IRS found that fewer than 20% of issuers had implemented specific written procedures or ad hoc processes at the level the IRS deems appropriate.
- A compliance plan is intended to provide written procedures for handling matters that arise after issuance of bonds. The plan should detail record retention policies, private use monitoring, arbitrage rebate and yield restriction, expenditure of bond proceeds, remedial actions and other issues that may arise over the life of a bond issue.
- Conduit financings are not exempt. Because the conduit issuer is treated as
 a "taxpayer" for federal tax purposes and procedures, the issuer is the party
 generally responsible for tax compliance. However, the bond documents
 generally provide for delegation of certain responsibilities to the conduit
 borrower.

XI. CURRENT EVENTS

- Voluntary COVID Disclosure
- Meetings in the COVID World
- TEFRA via Telephone

QUESTIONS

- Contacts
 - Rhonda D. Bond-Collins
 - rcollins@bmolaw.com
 - (407) 426-7001
 - Kareem J. Spratling
 - kspratling@bmolaw.com
 - (813)-273-6677