

Florida Association of County Attorneys 2022 Annual CLE Seminar June 29 - 30, 2022 | Orange County Hyatt Regency Orlando Regency T

Wednesday, June 29, 2022

12:30 p.m. to 12:40 p.m. Opening Remarks and Welcome

Janette Knowlton, FACA Immediate Past President

Charlotte County Attorney

Jeff Steinsnyder, FACA President

Pasco County Attorney

12:40 p.m. to 1:30 p.m. Agritourism: The Phenomenon Sweeping the Sunshine State

Robert Williams, Esq. Lewis, Longman & Walker

Steven L. Hall, Esq., General Counsel

Florida Department of Agriculture & Consumer Services

1:30 p.m. to 2:20 p.m. How To Effectively Navigate the FEMA Appeals &

Arbitration Process *Michelle Zaltsberg, Esq.*

Baker Donelson Bearman Caldwell & Berkowitz PC

2:20 p.m. to 2:30 p.m. Refreshment Break

2:30 p.m. to 3:20 p.m. Enforcement of State Environmental Laws

Fred Aschauer, Esq. Lewis, Longman & Walker

3:20 p.m. to 4:00 p.m. The X's and O's of Public & Private Partnerships

Nikki Day, Esq. Kenneth R. Artin, Esq. Bryant Miller Olive P.A.

4:00 p.m. to 5:00 p.m. Affordable Housing in Florida: Covering All the Bases

Kody Glazer, Legal Director Florida Housing Coalition

5:00 p.m. to 6:00 p.m. Welcome Reception

Orchid (Recreation Level)

Thank You to Our Sponsors:











Florida Association of County Attorneys 2022 Annual CLE Seminar June 29 - 30, 2022 | Orange County Hyatt Regency Orlando Regency T

Thursday, June 30, 2022

8:30 a.m. to 9:00 a.m. Continental Breakfast Served

9:00 a.m. to 9:50 a.m. Public Safety: They Did What?

Lynn Hoshihara, Esq., Okaloosa County Attorney

Gregory Stewart, Esq. Nabors, Giblin & Nickerson

9:50 a.m. to 10:40 a.m. 2022 Legislative Briefing

Edward Labrador, Sr. Legislative Counsel

Florida Association of Counties

10:40 a.m. to 11:30 a.m. Employment Law & COVID-19 Pandemic: Lessons Learned

Jason Taylor, Esq. The Krisner Group

11:30 a.m. to 12:20 p.m. The Strange & Unusual: Legal Oddities in County Procurement

and Contracting Kerry Parsons, Esq. Evan Rosenthal, Esq. Nabors, Giblin & Nickerson

12:30 p.m. to 1:30 p.m. Awards Luncheon

Regency O

1:30 p.m. to 2:20 p.m. The Next Steps for Improving Professionalism in Florida

Gary Lesser, Esq., President

No PowerPoint or Written

Florida Bar

2:20 p.m. to 3:10 p.m. Public Corruption: The FBI is Watching No PowerPoint or Written

Special Agent Andrew Sekela Federal Bureau of Investigations

3:10 p.m. to 3:20 p.m. Refreshment Break

3:20 p.m. to 4:10 p.m. Cybersecurity Trends No PowerPoint or Written

Special Agent Andrew Sekela Federal Bureau of Investigations

4:10 p.m. to 5:00 p.m. Disclosure Issues in Public Finance

Brian Fender, Esq. Jen Taylor, Esq. Sarah Parrow, Esq. GrayRobinson, P.A.

5:00 p.m. to 5:10 p.m. Closing Remarks



Florida's Right to Farm Act Section 823.14, Florida Statutes

- Enacted in 1979
- It protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.
- A farm operation cannot be classified as a public or private nuisance if the farm:
 - Has been in operation for 1 year or more since its established date of operation;
 - Was not a nuisance when it was established; and
 - Conforms to generally accepted agricultural and management practices.



Florida's Right to Farm Act Section 823.14, Florida Statutes

- 823.14(6) Limitation on Duplication of Regulation
- ...a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program.



Agricultural Lands and Practices Act

Section 163.3162, Florida Statutes

- 163.3162 Duplication of Regulation
- A governmental entity may not exercise any of its powers to adopt or enforce any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if such activity is regulated through implemented best management practices, interim measures, or regulations adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

Agricultural Lands and Practices Act

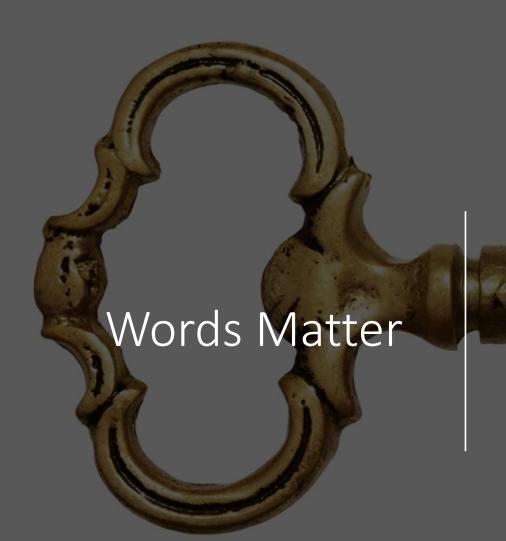
Section 163.3162, Florida Statutes First adopted in 2003

(3)(b) – No fees

(3)(c) – No stormwater management fees

Other Exceptions

Takeaway – "Adopt" vs "Adopt or Enforce" See <u>Wilson</u> v. Palm Beach County, 62 So. 3d 1247, 1252 (2011).



- The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land. s. 193.461(3)(b)
 - Decided by County Tax Collector annually
 - Statutory factors that MAY be considered
- Property classification as "agriculture" is the KEY to all of the state level exemptions for agriculture operations.

Words Matter

- "Agriculture" means the science and art of production of plants and animals useful to humans...and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production. s. 570.02(1)
- "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products. s. 823.14(3)(b)
- "Farm operation" means all conditions or activities ... which occur on a farm in connection with the production of farm, honeybee, or apiculture products or in connection with complementary agritourism activities. These conditions and activities include, but are not limited to, the marketing of farm products at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, fumes, and particle emissions; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; agritourism activities; and the employment and use of labor. s. 823.14(3)(c)
- "Farm product" means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom. s. 823.14(3)(d)

"Florida Legislature Passes Legislation to Modernize Right to Farm Protections"

Agritourism

- "Agritourism activity" is defined (cross reference) and then included in the definition of what constitutes a "farm operation".
- Result is that agritourism activities receive the nuisance protections that compliant farm operations receive under the terms of the act.

Farm Operation

• The definition of "farm operation" is expanded to include... "the generation of noise, odors, dust, <u>fumes</u>, and <u>particle</u> emissions..."

Nuisance

• Creates a definition of "nuisance" that is specific to the act.



"Lawsuit Protections: Evidence Standard and Damages"

The Legislature added several provisions to the law that are described in the staff analysis as "lawsuit protections."

- Clear and Convincing Evidence
 - Clarifies that a plaintiff must prove by "clear and convincing evidence" that the claim arises from conduct that did not comply with state or federal environmental laws, regulations, or best management practices to succeed in a nuisance action.



- One-half Mile Distance Restrictions
 - A nuisance action may not be filed against a farm operation unless the *real property*affected by the alleged nuisance condition is located within one-half mile of the source
 of the activity or structure which is alleged to be a nuisance.

"Lawsuit Protections: Evidence Standard and Damages"

- Compensatory Damages
 - If a plaintiff prevails in a private nuisance action against a farm operation, the measure
 of compensatory damages is limited to the reduction in the fair market value of the
 plaintiff's property caused by the nuisance. Damages may not exceed the fair market
 value of the property.
- Punitive Damages A plaintiff may not recover punitive damages unless:
 - The alleged nuisance is based on substantially the same conduct that resulted in a criminal conviction or a civil enforcement action by a state or federal environmental regulatory agency; and
 - the conviction or enforcement action happened within 3 years of the first act forming the basis of the current nuisance action.
- Costs and Expenses Awarded Against a Plaintiff
 - A plaintiff that loses a nuisance action against a farm operation is liable to the farm for all costs and expenses incurred in defending the action.

Section 604.50, Florida Statutes

Nonresidential farm buildings; farm fences; farm signs.

- First adopted in 1998
- "...any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes, not including those lands used for urban agriculture, is exempt from the Florida Building Code (See also s. 553.73) and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.
- "Nonresidential farm building" means:
 - 1 any temporary or permanent building or support structure
 - 2a that is classified as a nonresidential farm building on a farm under
 s. 553.73(10)(c) or
 - 2b that is used primarily for agricultural purposes,
 - 3a is located on land that is an integral part of a farm operation or
 - 3b is classified as agricultural land under s. 193.461,
 - 4 and is not intended to be used as a residential dwelling.
 - 5 The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 604.50, Florida Statutes

CASE LAW!

- 14269 BT LLC v. Vill. of Wellington (2018)
 - Horse Farm cited for various violations including no building permits for barns, storage building, and manure bin (also other issues)
 - 4th DCA barns, storage building, and manure bin, were exempt from village's zoning regulations, under Section 604.50 F.S.
 - Plain language of 604.50(1), nonresidential farm buildings are exempt from "any county or municipal code or fee." Legislature's 2011 amendment to this section indicates an intent to expand the exemption to include any county or municipal code rather than merely including county or municipal building codes.
 - Supreme Court declined to accept jurisdiction
- AGO's similar result

Agritourism Sections 570.85 -570.89, Florida Statutes

- First adopted in 2013
- "Agritourism activity" means 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. An 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. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity. s. 570.86(1)

Agritourism Sections 570.85 -570.89, Florida Statutes

- Amended by SB 1186; Chapter 2022-77, Laws of Florida
- Local Government Limitations
- It is the intent of the Legislature 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. 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. s. 570.86(1)
- Fire Marshal Regulations Ch. 69A-67, FAC

Recent Revisions Chapter 2022-77, Laws of Florida

- Effective July 1, 2022
- Removes a requirement that agritourism be a secondary stream of revenue for a bona fide agricultural operation.
- Clarifies that an agricultural land classification may not be denied or revoked solely due to the conduct of agritourism on a bona fide farm or due to the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities.
- The buildings, structures, or facilities must be an integral part of the agricultural operation.

Agritourism Case Law

- Nipper v. Walton County, Florida, 208 So. 3d 331, 332 (Fla. 1st DCA 2017)
- Landowners brought action for declaration they were permitted to operate
 a skydiving business on their farm and county cross-claimed for an
 injunction. Landowners argued the skydiving was an agritourism activity
 because it was a "package activity" and the skydivers observe the farm.
- **Held:** The court found that the primary purpose of the business was to skydive and that skydiving is not "an activity contemplated within the plain language of the Florida statute that deals with agritourism activity." Court also found operation of the skydiving business did not clearly violate county zoning code, and thus the county could not show a clear legal right to an injunction. This point did not hinge on the agritourism question.

Agritourism Real World Examples

Offsite Impacts

"U" Pick and Barn Friends

Wedding Venues

RV Parks

Exotic Animals

ATV tracks

Concerts

Medieval Fairs

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HOW TO EFFECTIVELY NAVIGATE THE FEMA APPEALS AND ARBITRATIONS PROCESS

Florida Association of County Attorneys

June 29, 2022

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APPLICANT'S RIGHT TO APPEAL

Sec. 423. Appeals of Assistance Decisions (42 U.S.C. 5189a)

(a) RIGHT OF APPEAL - Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.



APPEALS FOR DISASTERS DECLARED BEFORE JANUARY 1, 2022

- An applicant must submit its appeal to the recipient within 60 days of receiving notice of FEMA's determination.
- A recipient has 60 days from the date it receives the appeal to review and forward it, along with a written recommendation, to the appropriate FEMA Region.

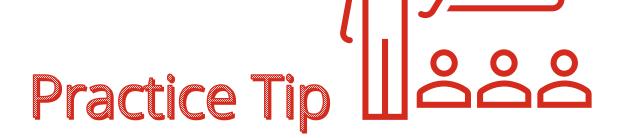


APPEALS FOR DISASTERS DECLARED AFTER JANUARY 1, 2022

An applicant must submit its appeal through the Grants Manager or Grants Portal system
within 60 days from the date FEMA electronically transmits its determination or first appeal
decision.

 The recipient has 120 days from the date FEMA electronically submits its determination or first appeal decision.

FEMA will not accept email or hard copy submissions.





DEADLINES

Sec. 423. Appeals of Assistance Decisions (42 U.S.C. 5189a)

- (a) RIGHT OF APPEAL Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.
- (b) Period for Decision A decision regarding an appeal under subsection (a) of this section shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.
- 4. Time Limits. For disasters declared on or after January 1, 2022:
 - a. Applicants must appeal FEMA eligibility determinations or first appeal decisions within 60 calendar days of the date of the determination or first appeal decision that is the subject of the appeal.¹⁰
 - b. "Date of the FEMA determination" and "date of the Regional Administrator's first appeal decision" as used in 44 C.F.R. § 206.206 means the date FEMA electronically transmits its determination or first appeal decision to the Applicant and Recipient.
 - Recipients must forward Applicants' appeals to FEMA, including the Recipient's written recommendation, within 120 calendar days of the date of the subject determination or first appeal decision.¹¹
 - FEMA will deny any appeals that do not meet the respective 60 calendar day and 120 calendar day deadlines.¹²

https://www.fema.gov/sites/default/files/documents/fema-public-assistance-appeals-arbitration-policy.pdf

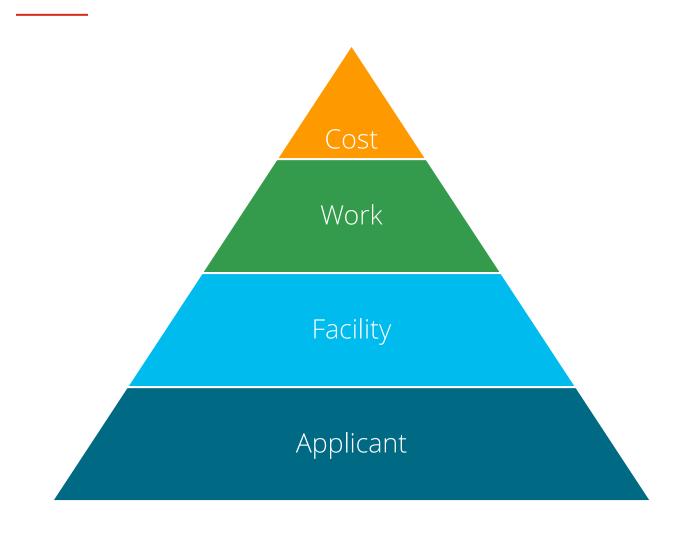
TRIGGERING THE RIGHT: APPEALABLE ACTION?

Four Primary Components to Eligibility:

- Cost
- Work
- Facility
- Applicant

But Also:

- Time Extension Denials
- Closeout deobligations
- Hazard Mitigation Proposal Denials





FEMA APPEALS

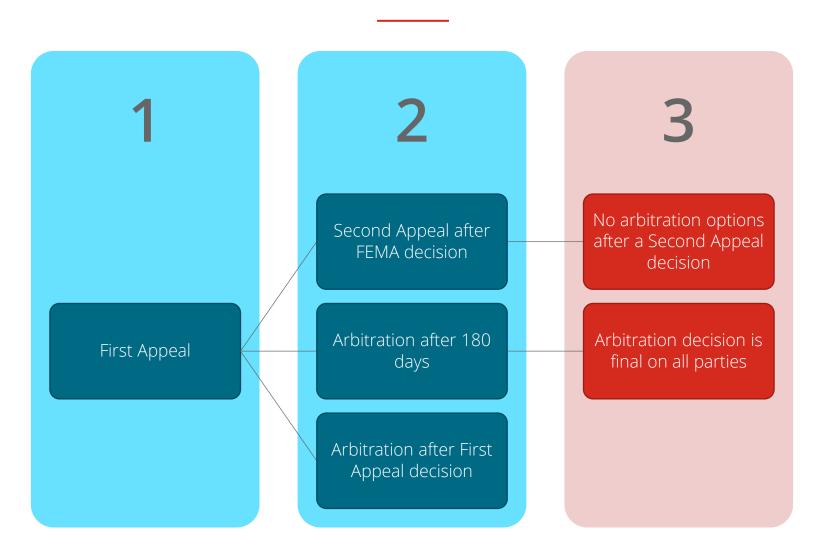
REQUIREMENTS OF APPEAL

The Applicant must include:

- All relevant documentation;
- Amount in dispute; and
- Citations to the provisions of law, regulation, or policy.



ADMINISTRATIVE APPEAL PROCESS: OVERVIEW



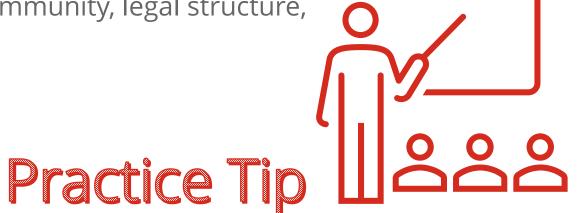


WORKING WITH FEMA

MINDSET

- FEMA wants to be consistent.
- Show them how to get to yes.
- Big Brother has a Big Brother.
- Do not expect them to know your industry, community, legal structure, agreements, etc.
- It is one FEMA with many offices.







DRAFTING THE APPEAL: SOURCES

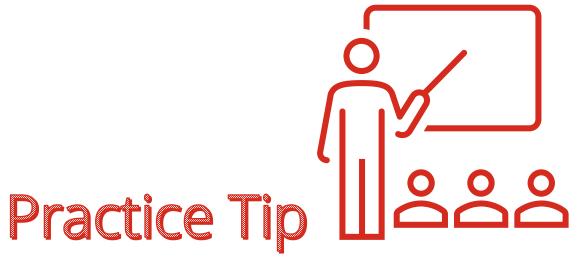
- Stafford Act, Code of Federal Regulations, Agency Policy
- FEMA Second Appeal Database
- GAO reports, Red Book
- DHS OIG reports
- Case law (there are a few FEMA PA court cases)
- Legislative intent
- Other Federal Agency decisions





RESOURCES

- First Appeals in other States
 - These are not published, but are public record
- Talk to other similar applicants in your field
- Use other State regulating agencies for support



- All documents and materials directly or indirectly considered by FEMA and relied upon in making a PA eligibility determination and subsequent first appeal decision.
- FEMA will only initially provide the Administrative Record Index.
- "If an applicant requests the entire record or portion of the record, it shall be provided."
- ASK FOR IT!
- BUILD ON IT!!

THE ADMINISTRATIVE RECORD

APPEAL EVIDENCE

BUILDING THE ADMINISTRATIVE RECORD

- Emails
- Logs
- Photos, videos, news clips
- New statements/affidavits
- Meeting notes
- Local law
- Subrecipient policies
- Pre-storm documents

- Inspections from other state and federal agencies
- Affidavits
- Corrected contracts
- BE CREATIVE



AFTER SUBMITTAL

THE REQUEST FOR INFORMATION (RFI) PROCESS

- RFI: A request for specific information needed to consider the appeal. Should be in writing, provide sufficient detail to describe the documentation needed, and include a deadline for response.
- In general, an RFI should establish a 30-day deadline from receipt to respond. An RFI
 deadline may be extended at the Regional Administrator's discretion.
- The 90-day processing timeline for the appeal resets upon receipt of the information or passing of the deadline to respond.



SECOND APPEAL AND ARBITRATION DEADLINES

Second Appeal: Same process and timeline as First Appeal except FEMA Region forwards package with recommendation to Headquarters for action.

Arbitration:

- Only for disasters declared on or after 1/1/2016 with disputes over \$500,000 (\$100,000 for rural areas)
- Must email request to Civilian Board of Contract Appeals either:
 - within 60 days of FEMA First Appeal Decision OR
 - 180+ days after FEMA receives the First Appeal (withdrawal of First Appeal required)

ARBITRATION VS. APPEAL

APPEAL PROCESS	ARBITRATION
ency at First Appeal level	All decisions published on CBCA website

No transparency at First Appeal level	All decisions published on CBCA website
No time limits enforced against FEMA	FEMA held to strict response time limits by the court
FEMA is the fact finder and arbiter	Conducted outside of the agency and decided through a quasi-judicial process before a neutral panel
Costs may be reimbursable as a direct administrative cost (or now under the DRRA as management costs)	Costs are borne entirely by the applicant and not reimbursable at any point – and likely much higher than appeal costs

Paper process only Option to present case at an oral hearing

SECOND APPEAL PROS

2ND APPEAL OR ARBITRATION

Second appeal may be a good option for Applicants who:

- Have new documentation since First Appeal;
- Engaged counsel to assist, and they have a new legal argument to present;
- Have had productive discussions with FEMA and the Recipient and feel confident that FEMA now has what it needs (i.e., a new cost estimate, a new contract document, inspection records, etc.)



ARBITRATION STATISTICS

As of June 13, 2022, there have been 41 published CBCA decisions for 2021 and 2022

- Win statistics: 17 (FEMA)/10 (Applicant)
- 12 withdrawn by Applicant
- 2 remands back to FEMA

17 states or territories involved (14 were Floridian applicants)

- Vast majority had live hearings
- A few were decided on the papers
- 1 oral argument only plus briefs
- Numerous motions to dismiss by FEMA

PANEL CONSIDERATION - STANDARD OF REVIEW

- CBCA-6716, Monroe County: "The panel is not expected to defer to the decision making of lower level FEMA officials, but instead exercises *de novo* review."
- CBCA-6909, Livingston Parish: "The panel makes decisions as FEMA would, by examining the facts in the arbitration record and fairly and impartially applying the applicable law."
- CBCA 7222, City of Beaumont: It is well-established that the arbitration panel, "as the final executive branch decision-maker, is not bound by a deferential standard of review."
- CBCA-3872, St. Tammany Parish: "The applicant bears the burden of establishing cost reasonableness."



TIMELINE OF ARBITRATION

- Docketed almost immediately
- FEMA Response due within 30 days of Docketing
- Telephonic scheduling conference within 14 calendar days of docketing
- IF REQUESTED, Hearing held within 60 days of the scheduling conference
- Decision issued 60 days after record closes



IN THE MATTER OF FLORIDA KEYS ELECTRIC COOP

Eligibility for Emergency Work – Base Camp Costs

- Decision November 2020 re Irma (2017)
- FEMA Offer to Resolve (Rejected)
- Hearing Done Right
 - FOIA Request
 - Cost Analysis
 - Affidavits
 - State Support
- 84% Amount at Issue Granted



PRACTICE TIPS

Cost considerations

FEMA only uses attorneys

Formality is judge dependent

Judges ask questions

Zoom hearings

Demonstratives

Experts with firsthand knowledge are key New documentation allowed!

Withdrawing the First Appeal

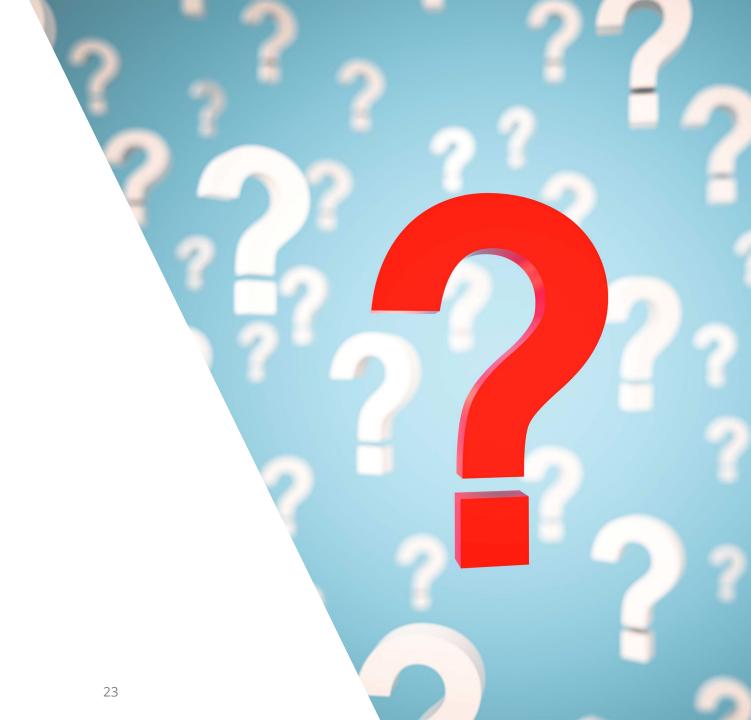
Q&A DISCUSSION

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Enforcement of State Environmental Laws June 29, 2022

Presented By:

Frederick L. Aschauer, Jr.



Environmental Enforcement









Background on State Environmental Enforcement

- Enforcement by the Florida Department of Environmental Protection (DEP) under Chapter 403, Florida Statutes
- Enforcement by DEP or Water Management District (WMD) under Chapter 373,
 Florida Statutes
- Enforcement by Florida Fish & Wildlife Commission under Chapter 379, Florida Statutes*
 - Under Part VIII, penalties, including criminal penalties, may be assessed



^{*}Not discussed in detail in presentation

Enforcement under Ch. 403, F.S. DEP

- § 403.121, Fla. Stat. Florida's Environmental Litigation Reform Act (ELRA)
 - Provides for the enforcement procedures for violations of Chapter 403
 - causing pollution, failing to obtain a permit, violating a permit, rule, regulation, or law. – § 403.161
- Sewage Disposal Facilities § 403.086
 - Rule Chapter 63-600, Florida Administrative Code
- "A stationary installation that is reasonably expected to be a source of air or water pollution . . ." - § 403.087
- Discharges of waste into waters of the state § 403.088



Pollution

• Section 403.031 (7) - "Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.



DEP Guidance

- FDEP Enforcement Manual
 - https://floridadep.gov/ogc/ogc/content/enforcement-manual
- FDEP Directive 923 updated July 2020
 - "These guidelines are provided solely for the use of Department staff in determining
 what position the agency should take in settlement negotiations concerning civil and
 administrative penalties. They are intended to provide a rational, fair and consistent
 method for determining whether the Department should seek a civil penalty in an
 enforcement action and the appropriate amount of civil and administrative penalties
 the Department should seek from responsible parties in settling enforcement actions
 when imposition of a civil penalty is appropriate."
 - Not an adopted rule, but provides the "rules of the road."



DEP memo on CAOs

- https://floridadep.gov/sites/default/files/Limitations on Use of CAOs 0.pdf
- Outlines common sense approach to Compliance Assistance Offer
- Limits Compliance Assistance Offers to no more than two in a 5-year period.
- A third Compliance Assistance Offer requires Deputy Secretary approval.
- Denial results in a warning letter, notice of violation, consent order, or case report will result.
- "If a violation is noted during an inspection and the permittee corrects that violation in the presence of DEP personnel during that same inspection, and the inspector does not deem the violation worthy of further enforcement action, then this may not be considered a CAO."
- Written CAO's are preferred by DEP.
- "All CAO's, written and verbal, will be tracked for each permit or registered facility."

Enforcement under 373 DEP & Water Management Districts

Section 373.129, FS provides enforcement authority under Ch. 373, FS.

The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

- (1) To enforce rules, regulations, and orders adopted or issued pursuant to this law.
- (2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto.
- (3) To protect and preserve the water resources of the state.

...

(5) To recover a civil penalty for each offense in an amount not to exceed \$15,000 per offense. Each date during which such violation occurs constitutes a separate offense.

...

(7) To enforce part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

•••



Enforcement under 373 DEP & Water Management Districts

- § 373.119, Fla. Stat. Administrative enforcement procedures
 - Whenever the executive director of a water management district has reason to believe that a violation of any provision of this chapter or any regulation promulgated thereunder or permits or order issued pursuant thereto has occurred, is occurring, or is about to occur, the executive director may cause a written complaint to be served upon the alleged violator or violators.
 - May issue emergency order "with the concurrence and advice of the governing board" requiring "such action be taken as the executive director deems necessary to meet the emergency."
- § 373.136, Fla. Stat. Enforcement of regulation and orders
 - Provide the authority to bring a "suit for injunction or other appropriate action in the courts of the state."
 - Allows for citizen suit, but such suit is "governed by the Florida Environmental Protection Act, s. 403.412."



Enforcement under Chapter 120, F.S.

- 120.69, F.S.
 - (1)(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.



Inspections

- Agency has right to inspect
 - Permit conditions
 - Statutory authority (if no permit although will require lawful authority to enter property (e.g. court order) if no permit)
- What to expect
 - Meeting onsite prior to inspection (safety briefing)
 - Inspection
 - How to conduct yourself
 - Meeting to close out inspection





Hierarchy of Notices

- Compliance Assistance Offer
 - Normally used when the violation is minor
- Warning Notice
 - Normally used if the Department does intend to pursue a consent order and/or penalties
- Notice of Violation
 - Normally used as an initial response if the violation is causing significant environmental harm or because a program-specific deadline for initiating formal enforcement must be met.
 - If after the issuance of an NOV, the responsible party fails to file a petition for formal or informal hearing within 20 days of receipt of the NOV, a default Final Order will be entered against the responsible party.



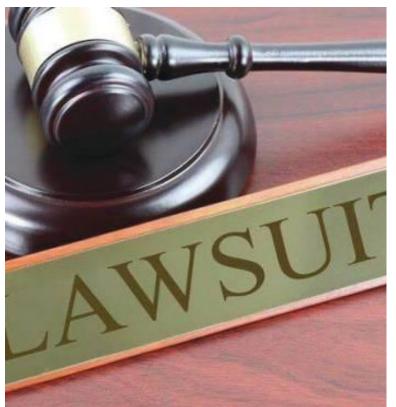
Consent Orders & Other Actions

- Consent Order
 - Short Form
 - Long Form
 - Model
- Final Orders
- Settlements- Informal Conferences and Mediation



Litigation – You've been served

- Civil Actions
- Administrative Actions
- General Principles
- Case Review





Initial Pleading – Civil Action

• § 403.121, Fla. Stat. – Florida's Environmental Litigation Reform Act (ELRA)

(1)(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.

- Before Circuit Court Judge
- Respond via answer
- Proceeding is governed by the Florida Rules of Civil Procedure



Initial Pleading – Administrative Action

§ 403.121, Fla. Stat.

(2)(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

- Administrative Complaint begins with an NOV. § 403.121(2)(c), FS
 - Must respond to the Administrative Complaint or will waive right to challenge. § 403.121(2)(c), FS
- Before Administrative Law Judge
 - Final Order authority if administrative penalties requested. § 403.121(2)(d), FS
 - Agency retains Final Order authority if no administrative penalties are requested. § 403.121(2)(d), FS
- Respond via Petition. § 403.121(2)(d), FS
- Proceeding is governed by the Uniform Rules. § 403.121(2)(h), FS



- Administrative hearings must go to final hearing within 180 days, unless the parties agree to a later date. § 403.121(2)(d), FS
 - Timing of civil proceedings will be dependent upon a number of things (e.g. court's calendar)
- In an administrative hearing, the prevailing party gets costs. § 403.121(2)(f), FS
 - Attorney's fees to the licensee (Respondent) if the NOV was not substantially justified ... but limited to \$15,000. § 403.121(2)(f), FS



- "The administrative law judge may receive evidence in mitigation." 403.121(10), FS
- Adjustment factors (from DEP 923):
 - Good faith efforts to comply prior to discovery
 - The violation was caused by the responsible party's employees or agents despite the responsible party's reasonable efforts to train, educate or inform its employees or agents.
 - The violation was caused by the responsible party as a result of a legitimate\misinterpretation of the Department's regulations.
 - The violation occurred after a Department regulation was changed and compliance was required, but the responsible party had been making reasonable efforts to bring its operation into compliance with the new Department regulation.
 - The responsible party took action on its own to mitigate the violation once it discovered that a violation had occurred.
 - Once the responsible party discovered the violation, it made changes to its operation on its own to prevent future violations from occurring.
 - The responsible party has demonstrated that it is implementing an acceptable pollution prevention plan.
 - The responsible party has demonstrated that it is operating in accordance with a DEP Ecosystem.
 Management Agreement.

- Lack of good faith (prior to Department discovery)
 - The responsible party knew it was not complying with the Department's regulations.
 - The responsible party claims it did not know it was not complying with the Department's regulations, but because of the nature of the responsible party's business and the length of time the business was operating, it is reasonable to assume that the responsible party should have known about the Department's regulations.
 - The violation was caused by an uninformed employee or agent of the responsible party, and the responsible party knew or should have known about the Department's regulations and made no or little effort to train, educate or inform its employees or agents.



- Adjustment factors (cont'd):
 - Good faith efforts to comply after Department is informed
 - Once the responsible party was notified of the violation by the Department, it took immediate action to stop the violation and mitigate any effects of the violation.
 - Once the responsible party was notified of the violation by the Department, it cooperated with the Department in reaching a quick and effective agreement for addressing the violation.
 - Some examples of lack of good faith efforts to comply are:
 - The responsible party took affirmative action that was in violation of the Department's regulation after being notified by the Department that such action constituted a violation of the Department's regulation.
 - The responsible party failed to take action to stop an ongoing violation or to mitigate the effects of a violation after being notified by the Department that it was in violation of a Department regulation. DEP 923 July 1, 2020.
 - The responsible party ignores the Department's requests to negotiate a settlement.



- Other adjustment factors:
 - History of non-compliance
 - Economic benefit of non-compliance
 - Ability to pay
 - Other unique penalties



Water Management Districts

- 373.129, F.S. "The ... governing board of any water management district ... or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction"
- 373.136, F.S. General authority to enforce regulations.



- Agency has the burden
 - Must spell out allegations in initial pleading
 - No surprises
 - Burden on the agency
 - "The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation." § 403.121(2)(d), Fla. Stat. (ELRA)
- Experts are critical
 - Like permit challenge, still will involve experts
- Facts are critical, too
 - As compared to permit challenge, where you are predicting whether your permit will cause any harm or is properly mitigation (reasonable assurance)



Case Review

 The statute must be construed in favor of the regulated. Gardinier, Inc. v. Fla. Dep't of Pollution Control

 The ability to pay for remediation of environmental harm is not a factor to be considered. Z.K. Mart, Inc. v. Dep't of Environmental Protection



Case Review

• An Administrative Law Judge may reduce the penalties. Fla. Dep't of Environmental Protection v. Holmes Dirt Service, Inc.; § 403.121(10), Fla. Stat.



Potential Pitfalls

Sanitary Sewer Overflows

Violations of Drinking Water regulations

Violations of Permit Conditions



Questions?



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Bryant Miller Olive

The X's and O's of Effective Contracting for P3s

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Kenneth Artin
Bryant Miller Olive P.A.

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Developing a P3 Contract and Preparing for a Long Term Relationship

Stages of a P3 delivery

- Identify scope and goals for the project
- Identify allocation of risks and rewards
- Negotiate agreements
- Live with what you created for 30 50 years (maybe)

Building the Foundation

- Spend time understanding the desired scope and goals and the allocation of risks and rewards
- Draft clear RFQ's and ITNs designed to outline
 - The desired scope and goals
 - The desired allocation of risk
- Draft clear agreements



Choosing the Right Partner

- ☐ The Sponsor should seek a private partner that will bring the best value to the project as opposed to the lowest bidder.
- Sponsor should have a comfort level with who the partner is, i.e. history of the organization, ownership and corporate structure.
- Private partners with no "Skin in the game"; have less motivation than partners who have something to lose.
- Sponsor can select a partner to share the risks as well as the rewards of the project with, and should select a partner that is better equipped or more experienced than it to handle certain risks associated with the project.

Choosing the Right Partner



PRIVATE PARTNER EVALUATION CRITERIA CHECKLIST

- ✓ Expertise
- √ Financial capacity
- ✓ Acceptance of risk transfer
- ✓ Demonstrated experience in delivery of similar projects
- ✓ Demonstrated experience in working with similar Sponsors
- ✓ Capacity to deliver the required quantity and quality of project/services
- ✓ Proposed infrastructure & end of term treatment
- ✓ Proposed timelines for the project
- ✓ Additional resources and capacity





1 SET THE FOUNDATION

- At the start of preparation of procurement documents, it is important to memorialize the underlying business arrangement and goals of the Sponsor.
- Additionally, the negotiating teams on both sides should agree to a framework for final discussions &negotiations.





2 GENERAL CONSIDERATIONS

- Rights and obligations of all parties to the agreement, clearly stated
- Reps and warranty obligations
- Financial and Operating Reporting requirements must be clearly provided
- Priority of cash flows and each parties' position of interest in collateral
- Procedures for resolving disputes
- Indemnification
- Legislatively mandated clauses, (i.e. Sovereign Immunity, Subject to Appropriation)
- Occurrence of Force Majeure
- Circumstances that may provide for termination
- Condition Precedents to trigger commencement / binding agreements





GENERAL CONSIDERATIONS CONT'D

- Change Orders
- Deemed Approval versus Deemed Rejection
- Liquidated Damages
- Reporting Requirements
- Audit Rights





3

AGREEMENTS

Agreements should be designed to ensure that, should there be problems, the lenders or equity partners have the power to take action with an understanding of:

- Who is their recourse counterparty, if any?
- Is there a leasehold mortgage and/or a right to foreclose on an asset for the remaining term of the ground lease?
- If so, what arrangements are not disturbed via subordination to the lender?



3

AGREEMENTS CONT'D

- Sponsor support provisions
- Does the structure of the financing arrangement create a direct, indirect, or moral obligation of the public user in the eyes of their accounting advisors and/or rating agencies?
- Careful consideration of "support" provisions
- Investment bankers love sponsor support to improve ratings



3

AGREEMENTS CONT'D

- □ The agreements need to address Termination for Convenience Buy Out Rights of the Sponsor. In the event the Sponsor needs to unwind the project, clear provisions on how to unwind the transaction need to be negotiated.
- Step-in Rights of the Sponsor in the event operational issues arise. Provisions to deal with control over the removal of the manager is key for the Sponsor.
- Higher Ed. Sponsors of Student Housing should consider a perpetual reservation of front office operations.





4

A Practical Example

□ [Embed video: beginning at 43:40 minutes http://publicfiles.dep.state.fl.us/dsl/LRGWeb/FCT/FCT%20Governing%20Board%20Meetin g%20Materials/Meeting%20Summary/FCT%20Governing%20Board%20Ranking%20&%20Se lection%20Meeting.mp4]







4

Contract Provisions Navigated

- Ownership
- Control
- Conservation/Objectives





4

A Practical Example

□ [Embed video: beginning at 47:48 minutes http://publicfiles.dep.state.fl.us/dsl/LRGWeb/FCT/FCT%20Governing%20Board%20Meetin g%20Materials/Meeting%20Summary/FCT%20Governing%20Board%20Ranking%20&%20Se lection%20Meeting.mp4]



Questions?

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Affordable Housing in Florida: Covering All the Bases



Kody Glazer,
Florida Housing Coalition
Legal Director
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Florida Association of County Attorneys 2022 Annual CLE Seminar





Sponsored by the Florida Housing Finance Corporation



we make housing affordable™



About the Florida Housing Coalition

- Statewide nonprofit organization that is primarily a training and technical assistance provider to local governments and nonprofits on all things affordable housing
- Our work covers:
 - Compliance with local, state, and federal affordable housing programs
 - Affordable housing program design
 - Capacity building for nonprofit housing providers
 - Land use planning for affordable housing
 - Research & data gathering
- Facilitates the Sadowski Coalition a statewide organization organized solely for the purpose to fully fund Florida's affordable housing trust funds



My role as FHC Legal Director

- Provides information to local government housing & planning staff on affordable housing policies & accompanying laws/regulations; always deferring to City & County Attorneys on legal interpretations
- Helps local government housing staff comply with the State Housing Initiatives Partnership (SHIP) program regulations and similar affordable housing programs
- Provides technical assistance to nonprofit housing developers on funding sources, strategy, organizational issues, leases, etc.
- Researches innovative affordable housing policies
- Supports FHC staff on legal issues



Topics covered

- Defining affordable housing
- Affordable housing funding
- Zoning & land use laws
- Using publicly-owned land for housing
- Local government tools for long-term affordability
- Florida's fair housing law making affordable housing a protected class



Housing Unaffordability & Unsustainability in Florida

- According to the Florida Realtors, the median sales price in 2022 is \$393,000
 a 21.8% increase over 2021
- Out of 22 MSAs in Florida, 17 have seen home price growth of 20% or more in the past year
- Rents are up 20-40% in certain metros
- Housing inventory is at historic lows

Analysts: Lack of affordable housing threatens economy

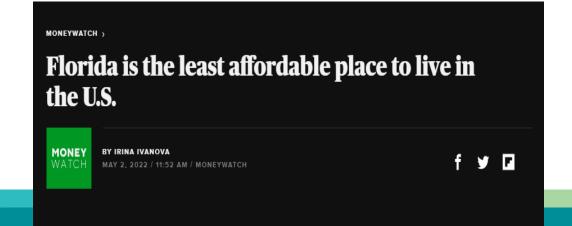


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Janis Clark faces eviction from her West Palm Beach apartment amid ongoing issues with the Florida Department of

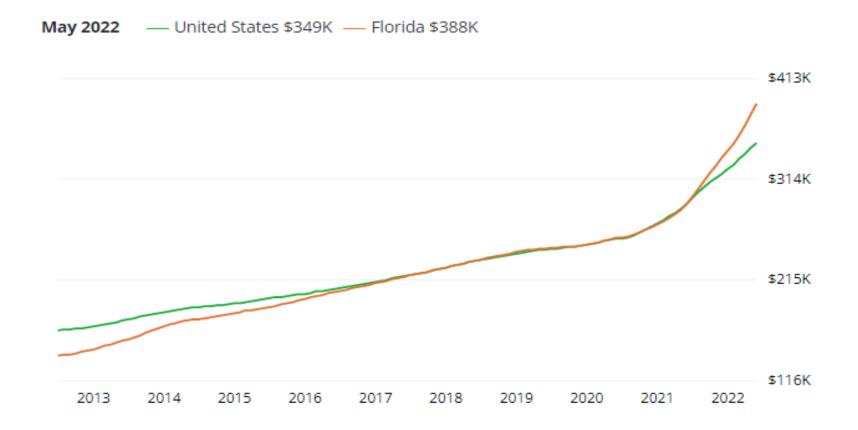
HOUSING RESOURCES

- County-by-county resources for renters facing eviction
- OUR Florida Emergency Rental Assistance Relief Program
- Palm Beach County
 Department of Housing and
 Economic Development
- Palm Beach County Community Services
- Boca Raton
- · St. Lucie County





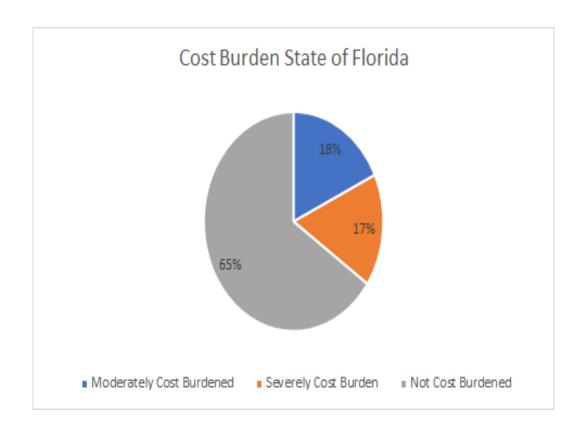
Zillow Home Value Index





Cost burden

- Cost burden is a typical measure of housing unaffordability
- A household is "cost burdened" if it spends more than 30% of its gross income on housing costs
- 2.7 million households in Florida (35%) are cost burdened
- 17% of Florida households pay more than 50% of their income on housing







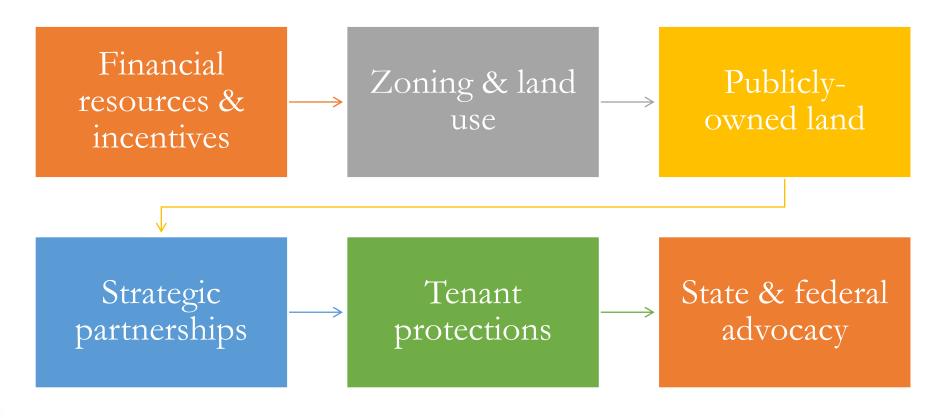
I. Local government role in making housing affordable

How is affordable housing produced?

- Local governments are legally required to plan for housing for current and anticipated population- Housing Element requirement- section 163.3177, F.S.
- But the public sector rarely builds affordable housing on its own it uses its land use and financing tools to create an environment conducive for the private sector to produce affordable housing.
- Primary tools are planning laws and financial subsidy, using incentives and requirements.



Local Government Affordable Housing Tools







II. Defining affordable housing

Defining affordable housing

- "Affordable" or "workforce" or "attainable" or "attainable workforce" housing are political terms when setting policy
- The definition of what is "affordable housing" or "workforce housing" largely depends on the funding source or policy initiative
- Generally, "affordable" means that monthly housing payments do not exceed 30 percent of the gross income (pre-tax income) for extremely-low (0-30% AMI) to moderate-income households (120% AMI)
- Area median income (AMI): established annually by HUD; tiered based on household size



Orlando, FL Area Median Income(s)

- If following HUD data, AMI for Orlando is based on the Orlando-Kissimmee-Sanford MSA
- This means Orlando, all of Orange County, and Osceola County have the same AMI limits through HUD
- When using local funds (or depending on the funding source), local governments can set own income limits based on localized data

	2022 Income Limit by Household Size				
AMI	1	2	3	4	5
30%	17,400	19,900	23,030	27,750	32,470
50%	29,050	33,200	37,350	41,450	44,800
80%	46,450	53,050	59,700	66,300	71,650
120%	69,720	79,680	89,640	99,480	107,520
140%	81,340	92,960	104,580	116,060	125,440



Check the funding source or policy initiative

- State Housing Initiatives Partnership (SHIP) up to 140% AMI
- Community Development Block Grant (CDBG) primarily serves up to 80% AMI
- HOME Investment Partnerships Program (HOME) –up to 80% AMI
- Emergency Solutions Grant (ESG)- up to 50% AMI
- State surplus lands law up to 120% AMI
- Homeownership Pool Program (HOP) up to 80% AMI
- Local affordable housing program? Check your local definition.



Fla. Stat., § 420.0004(3) definition of affordable housing

- This section is often cited as the prevailing definition for affordable housing in Florida
- A number of statutes cite to this 420.0004 definition including:
 - Surplus Lands Law: F.S. 125.379/166.0451
 - Affordable housing property exemption: F.S. 196.1978
 - HB 1339 zoning flexibility for affordable housing: F.S. 125.01055/166.04151
 - Brownfields site rehabilitation tax credit: F.S. 220.1845
- F.S. 420.0004 <u>does not preempt local governments</u> from adopting their own definition of affordable housing for locally-sourced funding programs or policy initiatives



Review: Definition of affordable housing

- Always check the funding source or controlling state statute
- Terms like "affordable," "attainable," and "workforce," are largely political terms when setting policy
- F.S. 420.0004 definition is used widely but does not preempt local governments from adopting their own definition





III. Affordable housing funding

Financial Resources

Sources

- Immediate: Dedicate American Rescue Plan
 State & Local Fiscal Recovery Funds
 (SLFRF) towards affordable housing efforts
- Federal & state funds: Continue to ensure that funds are deployed effectively
 - Sources: SHIP, CDBG, HOME, ESG, etc.
- <u>Local funds</u>: Create and fund a local affordable housing trust fund to supplement state & federal funds
 - Sources: General revenue, linkage fee, infrastructure surtax, sale of publiclyowned land, CRA, bonds

Uses

- Individual subsidy
 - Down payment & closing cost assistance
 - Rental assistance, vouchers, relocation costs
- Development of new affordable units
 - Financing, land acquisition
- Rehabilitation/repair of existing affordable units
- Organizational support
 - Legal aid & homeowner counseling
 - Operational support for nonprofits



State Housing Initiatives Partnership (SHIP) program

- F.S. 420.907 420.9079
- Example for how funding sources can be dictated by statute and how a locally-funded program can be structured
- Key provisions
 - Income levels served with income set-asides (30% for low-income; 30% for very-low-income)
 - Eligible uses w/set-aside requirements (65% for homeownership; 75% for construction)
 - Affordability periods
 - Producing a plan for how funds are spent
 - Annual reporting requirements
 - Loan, grant, & recapture standards



Local Affordable Housing Trust Fund

- Local governments can establish their own funding sources to support a local affordable housing trust fund
- A local programs can fill needs not met by existing state and federal sources
- Local ordinance would dictate eligible uses, incomes served, reporting requirements, and other standards
- Locally sourced fund examples:
 - General revenue Hillsborough County & Orange County
 - Linkage fee Winter Park
 - Infrastructure surtax Pinellas County
 - Community Redevelopment Agencies (CRA) F.S. 163.360/163.387
 Bond Miami-Dade County

Linkage Fee

- A linkage fee is akin to a housing impact fee local government tool to raise revenue for affordable housing programs
- Typically charged on new office, commercial, or industrial development
- "Links" a new development with the workforce housing needs generated by that development
- Like with a traditional impact fee, collecting a linkage fee requires a nexus study
- Florida examples: Winter Park, Coconut Creek, Jupiter
- St. Petersburg, Broward County, and Winter Park have recently completed nexus studies



Linkage Fees are Codified in Statute

F.S. 125.01055 (counties) & F.S. 166.04151(municipalities):

- (3) An affordable housing linkage fee ordinance may require the payment of a flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.
- (4) In exchange for a developer fulfilling the requirements of subsection (2) or, for a residential or mixed-use residential development, the requirements of subsection (3), a [city or county] must provide incentives to fully offset all costs to the developer of its affordable housing contribution or linkage fee.

Note: A local government does **NOT** need to fully offset all costs for a linkage fee on commercial, office, industrial, or other non-residential uses. This provision makes assessing a linkage fee on residential development more difficult.



Implementing a Linkage Fee Ordinance

- Consider development factors
- Nexus study (see Broward County, St. Petersburg, Winter Park)
 - Establish connection between new development and its generated workforce housing demand
 - Determine maximum fee amount based on use
- Program administration
 - When fee is collected and by whom
 - Alternatives to paying the fee
 - Uses of the funds



Linkage Fee Uses

- Land acquisition for workforce housing
- Down-payment assistance
- Rental subsidies and move-in costs for new workers
- New construction
- Home repair



Infrastructure Surtax

- F.S. § 212.055(2) authorizes counties to levy a discretionary sales surtax of 0.5 of 1 percent as a Local Government Infrastructure Surtax
- Commonly called a "Penny Sales Tax" or "Half-cent Sales Tax"
- F.S. 212.055(2)(d): allows counties to use this surtax for land acquisition for affordable housing
- Examples:
 - Pinellas County \$80 million of "Penny for Pinellas" from 2020-2030 on affordable housing
 - Collier County plans to use \$20 million of the surtax for a Workforce Housing Land Trust Fund

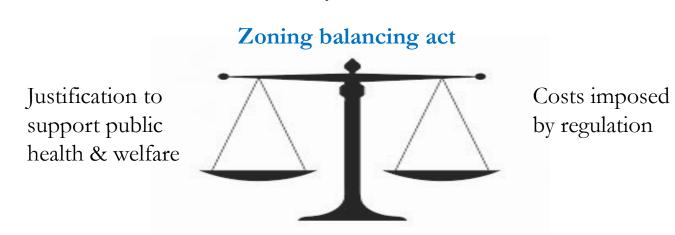




IV. Zoning & land use laws

Zoning for affordable housing

- Newton's Third Law of Motion: For every action, there is an equal and opposite reaction
- Every zoning & land use requirement has a cost whether a monetary cost (dollars & cents) or societal cost (housing not being built)
- Investigate your zoning code to see which standards support the public interest and which standards are arbitrary





Visualizing the zoning code

- Improving a comprehensive plan or zoning code won't automatically produce all the affordable housing needed overnight, but <u>land use regulations can be the first barrier to overcome</u>
- Local land use decisions today will shape the housing market for years to come
- Picture a vacant, infill lot in your community. Ask:
 - If an affordable housing nonprofit wanted to develop a duplex, triplex, or townhome on this land, could they?
 - What could they build under the existing zoning? How do the minimum lot size, setback, parking, and maximum lot coverage requirements affect what can be built?
 - How much time & money would need to be spent to rezone the parcel to its best use?
- Zoning must be forward-looking to support the housing needs of current and future residents



Required Housing Impact Statement

- Every local government that receives State Housing Initiatives Partnership (SHIP) funds is required to have "an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption." F.S. 420.9071(18).
- <u>Purpose</u>: to require local governments to consider how proposed governmental actions may affect the cost of housing development
- Requires staff to determine if various decisions have a financial impact on affordable housing and the actual dollar impact (to be reported in the SHIP Annual Report and Local Housing Incentives Certification)



Specific zoning & land use tools

- Zoning and land use override for affordable housing (House Bill 1339 (2020))
- Mandatory inclusionary zoning
- Density bonuses + other incentives
- Regulatory reform allowing more housing types & densities as-of-right
- Accessory dwelling units
- Florida Fair Housing Act section 760.26, F.S- unlawful to discriminate against affordable housing



Housing Element of the Comprehensive Plan

- Required element of the local Comp Plan. Fla. Stat. § 163.3177(6)(f)(1).
- Local governments are required to plan for housing for all current and anticipated future residents (including the special needs populations) and provide for adequate sites for ... housing for [lower income] families.
- How is this done? By creating an environment **conducive** for the private sector to produce affordable housing.
- Public sector has an obligation to use its land use planning and financing tools to ensure the private sector will produce housing that is affordable.
- Buttressing the obligation and ability to require affordable housing in exchange for local government action is **Land Value Creation and Capture**.



Land Value Creation and Capture

- Land value capture is the concept that certain **governmental activities** lead to **increases in property values** and thus some of the increment should be **recouped for public benefit**
- Government activities that increase property values includes Up-zonings and Infrastructure investments
- For example, when local government rezones a property from agricultural to residential, that results in a dramatic increase in property value for the landowner. Same applies to PUDs.
- Local government secures public benefit (affordable housing) in return for increased property value caused by its land use approvals.



Land Use Flexibility for Affordable Housing

- House Bill 1339 (2020), amended by Senate Bill 962 (2022), provided tremendous flexibility to local governments to approve affordable housing developments without needing a rezoning or comprehensive plan amendment.
- S. 125.01055(6) for counties and S. 166.04151(6) for cities:

"Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a [city or county] may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use. . .

... If a parcel is zoned for commercial or industrial use, an approval pursuant to this subsection may include any residential development project, including a mixed-use residential development project, so long as at least 10 percent of the units included in the project are for housing that is affordable and the developer of the project agrees not to apply for or receive funding under s. 420.5087.



What does this new statutory provision mean?

- It grants permission for a local government to override its own comprehensive plan and/or zoning code to approve an affordable housing development
- Ex) An affordable housing developer could be permitted to build a multifamily project in a commercial land use designation without needing a zoning change
- This language can act as a "super-waiver" of land development regulations for affordable housing developments



Benefits & Burdens







- Could reduce costly land use barriers for affordable housing development
- Expands government owned-lands that can be used for housing
- Expedite affordable development
- Can be helpful for missing middle housing & adaptive reuse
- Helpful in combating NIMBY

Not so good



- Would be harmful if misused to permit affordable housing where people should not live e.g. near toxic uses, in food deserts, areas without adequate transit or infrastructure
- If used in commercial and industrial areas, may reduce available land for new employment/job growth



How to implement F.S. §§ 125.01055(6)/166.04151(6)

- State law does not provide a method for how to implement this land use flexibility
- Can be done through an implementing ordinance (St. Petersburg) or on a caseby-case basis at the staff level (Jacksonville)
- Although these statutes allow the waiver of <u>all</u> development standards, there will be development standards the local government will still need to regulate:
 - Density
 - Parking
 - Setbacks
 - Compatibility with surrounding structures
 - Environmental considerations



It's all a matter of priority...

- If a local government has the **motivation** to approve a particular affordable housing development in a residential, commercial, or industrial zone, it can use § 125.01055(6) or § 166.04151(6) to do so regardless of the underlying zoning
- Use this land use flexibility to condition fast-tracked development approval on the provision of long-term affordable units
- Ex) if a residential zone only allows 60 units to be built, this provision can be used to allow a developer to build 100 units if affordable housing is provided
- Ex) a local government could use this provision to allow an affordable triplex to be built in a single-family zone
- The possibilities are endless!



Inclusionary zoning

- Mandatory inclusionary zoning is a land use tool that <u>requires</u> a market-rate developer to provide a set number or percentage of affordable units within a market-rate development
- "Zoning" is a misnomer it is more accurately a land use policy
- Voluntary inclusionary/incentives <u>encourages</u> the private sector to provide affordable housing in exchange for favorable development rights (incentives)
- Mandatory IZ is authorized by statute at s. 125.01055 (counties) and s. 166.04151 (cities)



House Bill 7103 (2019)

- Amended Florida's inclusionary zoning laws found at ss. 125.01055 (counties) and 166.04151 (municipalities)
- For mandatory inclusionary zoning, local governments must now "provide incentives to <u>fully offset all costs</u> to the developer of its affordable housing contribution"
- Ex) if there is a 200-unit market-rate development and 20% of the units are required to be affordable, local government must provide incentives to "fully offset all costs" associated with the 40 affordable units



How to "fully offset all costs" to comply with state law

- First and foremost, Land Value Creation. This could entirely satisfy fully offsetting all costs.
- In addition, density bonuses can more than offset the cost of an inclusionary requirement.
- Other incentive ideas include:
 - Height bonuses; Fee waivers; Flexible design standards; Reduced parking requirement; Infrastructure contributions; Offering publicly-owned land below-market
 - All the negotiations that go into a planned unit development or a master planned community. Especially large-scale development and New Urbanist development (TND)



Development incentives for affordable housing

- Density bonuses
 - Most Florida density bonus provisions for affordable housing or not used or underutilized
- Expedited permitting
- Parking reductions
- Financial subsidy
- Fee waivers (impact, building, site plan review, etc.)



More land use tools for affordable housing

- Allowing more flexibility in housing types allow more duplexes, triplexes, townhomes, and apartment buildings by-right
 - Why? Smaller housing types make greater use of limited land and by allowing more housing types by-right, local government can lower barriers to develop new housing
- Pairing infrastructure investments with affordable housing incentives or requirements



760.26 - Florida Fair Housing Act for overcoming Not in my backyard (NIMBYism)

760.26 Prohibited discrimination in land use decisions and in permitting of development.—It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.



Tools for Avoiding NIMBYism

- 1. Reduce unnecessary approvals
 - Approve developments "by right"
 - Delegate approvals to staff rather than at a public hearing
- 2. Launch general audience education campaigns
 - Make use of credible research and local data to support the message
 - Educate elected officials and the community to view affordable housing as a community asset or infrastructure
- 3. Garner support from a broad range of interests
 - Engage business community, philanthropy. clergy, social services agencies
 - Make the connection between affordable housing and community sustainability

Tools for Avoiding NIMBYism

- 4. Engage elected officials
 - Meet with key staff
 - Embrace affordable housing as essential infrastructure
 - Address the elected officials' interests and concerns
- 5. Engage neighborhood groups with specific developments
 - If neighborhood engagement is done well, it can smooth the development process



Tools for Overcoming NIMBYism

- 1. Address all legitimate opposition
 - Focus on legitimate, non-discriminatory (on its face) concerns around issues like traffic or project design
- 2. Know the law and use the law
 - If all legitimate concerns are addressed, a project denial may violate fair housing law and/or the 14th amendment
 - 14th Amendment of U.S. Constitution: local officials must have a rational purpose for exercising development decisions
 - Courts have held that the public's negative attitude, or fear, unsubstantiated by factors that are property recognized in a development proceeding, are not "rational purposes" for land use decisions
 - Florida Fair Housing Act at s. 760.26: prevents discrimination in land use decision made on the basis of financing
 - CH 70 Enforcement through Bert Harris Property Rights Act



V. Using publiclyowned land

Inventory of lands appropriate for affordable housing

- F.S. 125.379 (counties)/166.0451 (cities) commonly referred to as the "Surplus land laws"
- These statutes require local governments to produce an inventory list every 3 years of all lands it owns in fee simple which are "appropriate for use as affordable housing"
- <u>Best practice</u>: all publicly-owned lands that are developable & appropriate for any housing should be placed on the affordable housing inventory
- School boards (F.S. 1001.43) and CRAs can also use its land for affordable housing purposes



Uses of publicly-owned land placed on the affordable housing inventory. F.S. 125.379(2)/F.S. 166.0451(2)

- Lands that are placed on the affordable housing inventory may be:
 - Offered for sale and use the proceeds to purchase land for affordable housing
 - Offered for sale and use the proceeds to increase the local government fund earmarked for housing
 - Sold with a restriction the requires the development of the property as permanent affordable housing
 - Donated to a nonprofit housing organization for the construction of permanent affordable housing
 - Otherwise make available for production and preservation of permanent affordable housing



Local government authorization to sell or lease real property for affordable housing

S. 125.35(1), Fla. Stat. "The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine."

Municipalities are left to the discretion of their governing body under home rule unless otherwise prescribed by state law or county charter.

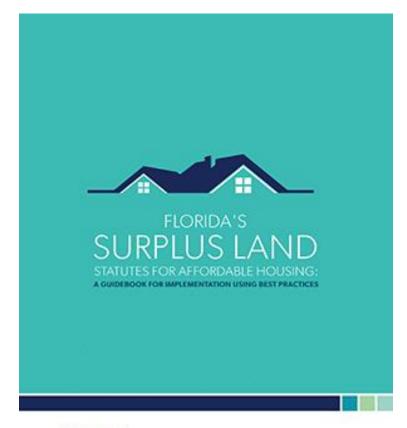


Does publicly-owned land have to be on the required affordable housing inventory to sell or lease the land for affordable housing?

No. Counties under F.S. 125.35 have the discretion to sell or lease land for affordable housing purposes regardless of if the land is on the affordable housing inventory. Municipalities, using their home rule authority, can also do so unless a state statute or county charter is in conflict.



Check out our Surplus Lands Guidebook for more info











VI. Local government tools for long-term affordability

Long-term affordability

- Limited public resources should be used for housing that will be affordable permanently or affordable long-term (50+ years)
- Local governments can go above affordability requirements set by state or federal funding programs
- Main tools to ensure permanent or long-term affordability
 - 99-year ground lease- using a CLT, or other mechanism
 - Land use restriction agreement (LURA)
 - Deed restriction- of limited use-only applies if local government is deeding the property- also lacks privity for enforcement



99 Year Ground Lease - Community Land Trust

- A Community Land Trust is an alternative to renting
- A Community Land Trust (CLT) is a nonprofit entity that stewards land used for permanent affordable housing
- For homeownership, a CLT sells resale-restricted, below-market rate housing to income-eligible homebuyers subject to a 99-year ground lease
- F.S. 193.018: CLT property appraiser statute required CLT homes to be assessed according to resale-restricted value



Using a CLT for Rental Housing

- Local government can ensure permanent affordability for rental development on land it owns through a 99-year ground lease.
- Local Government could require that in exchange for subsidy, developer would deed the land to local government or a separate CLT using 99-year ground lease. (see Pinellas County)



Long Term or Permanent Affordability without a CLT

Land use restriction agreement

- Affordability period
- Households served
- Compliance monitoring procedures
- Party responsible for qualifying households (developer or housing staff?)
- Reversion clause if housing is not developed within ____ number of years
- Enforcement- specific enforcement rather than financial penalties is important to avoid flipping development to market rate.



florida community land trust

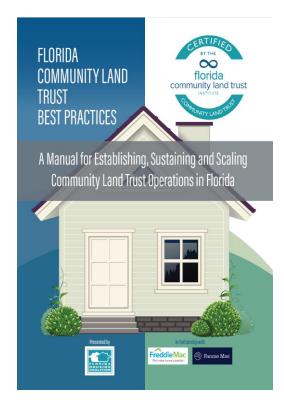
INSTITUTE















VI. Florida's fair
housing law – making
affordable housing a
protected class

Takeaways

- Local government has an obligation under the Housing Element to provide for affordable housing
- Local government has a number of the zoning, financial, and land resources to address housing affordability
- Strive for permanent affordability
- Florida fair housing land use law makes it unlawful to discriminate against affordable housing







FLORIDA HOUSING COALITION PUBLICATIONS

Access these valuable resources and more under the Publications tab at Flhousing.org

Housing News Network Journal
Florida Home Matters Report
Accessory Dwelling Unit (ADU) Guidebook
Adaptive Reuse of Vacant Rentals
Affordable Housing Resource Guide
Affordable Housing Incentive Strategies
CLT (Community Land Trust) Primer

Community Allies Guide to Opportunity Zones
Community-Based Planning Guide
Creating a Local Housing Disaster Recovery

CLT Homebuyer Education – Teacher's Guide

CLT Homebuyer Education – Buyer's Guide

Creating Inclusive Communities in Florida

Credit Underwriting Guide for Multi-Family Affordable Housing in Florida

Developing & Operating Small Scale Rental Properties

Disaster Management Guide for Housing

Landlord Collaboration Guidebook

PSH Property Management Guidebook

Residential Rehabilitation Guide

SHIP Administrators Guidebook

Surplus Lands Guidebook

Supporting Households Moving Out of Homelessness

Using SHIP For Rental Housing















































Contact Information



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PUBLIC SAFETY: THEY DID WHAT?!?!









Greg Stewart Lynn Hoshihara

FACA JUNE 2022

First Responders are our everyday heroes:



- -Respond to 911 calls
- -Provide emergency medical care
- -Provide fire services
- -Disaster preparedness and response



Personnel Matters

DISCUSSION TOPICS



Patient Care Issues



Unionization

PERSONNEL MATTERS

Long shifts
Close quarters
Frequent downtime +
Adrenaline rush

= Blurred boundaries

Polk County EMS workers accused of having sex while on-duty











On-Duty Miami Paramedic Caught Having Sex with Patient; Loses License For 'Gross Misconduct'

By Parwinder Sandhu













Legal Issues

- Sexual harassment
- Gender discrimination
- Racial discrimination
- Hostile workplace
- Retaliation
- Claims of favoritism, disparate treatment, etc.

Update Code of Conduct

Best Practices

Mandatory training

• Investigate complaints promptly

• Strict & uniform enforcement

•Obvious dangers

Social Media · Less obvious dangers

How to avoid pitfalls

DO'S	DON'TS
Limit posting in your official capacity	Post confidential information about patients
Be mindful of posts on your personal account	Post information or picture of an active scene
When in doubt, leave it out!	Defame someone's character or decrease morale in your department

...AND MORE DON'TS

Post evidence you lied

Talk about patients online

Post evidence of drug use

Post racist or sexist comments

Give professional advice outside scope of employment

Encourage or incite violence

Violation of privacy

Legal Issues Defamation

Disciplinary action

SunStar/Pinellas EMT's 'EMS Bingo' photo draws criticism

Published May 20, 2016 News FOX 13 Tampa Bay

Two Florida paramedics engaged in 'selfie war' and posed with dozens of unconscious patients

By Adam Shrier NEW YORK DAILY NEWS | Jul 22, 2016 at 12:17 PM

Firefighter fired over Obama toilet tissue

The firefighter was cited for insubordination for previously making political statements on city property

Dec 2, 2012

•Policy prohibiting use of County logo

Best Practices

• Training as to limitations on use of information

Routine monitoring

Substance Abuse

• High stress environment

Lack of sleep

Access to narcotics

Substance Abuse

More firefighters die from drug overdose or suicide than on the job.

 Emphasize front-end treatment

Best Practices • Strengthen policies

•Increase frequency of random drug testing

Medical Malpractice

Patient Care •4th Amendment Rights

• Privacy Issue

Missed intubations

Medical Malpractice

• Using wrong or expired meds

Practicing outside established protocols

Patient abandonment

Patients' 4th Amendment Rights

Illegal use of excessive force in providing treatment

Chemical restraints

McClain was walking home from a convenience store when someone called 911 and reported him acting suspiciously.

Elijah McClain

Officers restrained McClain and paramedics administered ketamine at a dose too high for someone his size.

Grand jury issued 32 indictments against three Aurora police officers and two paramedics involved in detaining McClain.

Other Examples

Physical restraints
 (compression techniques or strapping patient to gurney)

• Improper release of personal health information (PHI) under HIPAA

Best Practices

•Establish use-of-force policies for EMS

• Training on how to interact with law enforcement

HIPAA

• Establishes minimum privacy practice standards

• Does not create a private cause of action

• Civil penalties – fines

HIPAA violations

Criminal penalties – fines and imprisonment

 Targets healthcare providers and agencies

FIPA

• Requires businesses and governmental entities to protect consumer data in electronic format

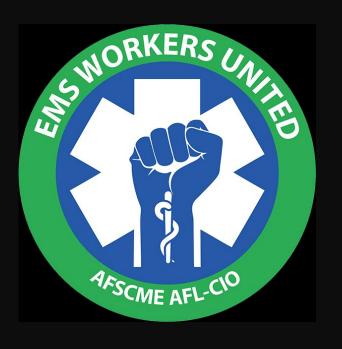
• If data released, affirmative duty to notify party within 30 days

FIPA violations

• Violations will be treated as an Unfair or Deceptive Trade Practice

 Additional penalties for violations of notice requirements

Collective Bargaining and Unions





Employers cannot:

Unions

- Threaten employees with loss of jobs or benefits
- Question employee about union sympathies or activities
- Promise benefits to discourage union support
- Penalize employee for filing an unfair labor practice charge

Employers can:

Unions

- Inform employees of their position on unionization
- Inform employees about their rights
- Compare benefits (union v. nonunion)
- Inform employees of procedural changes
- Explain costs of union membership
- Prohibit unions from organizing in public spaces

Florida union exec accused of misspending, lawsuit says

Vicki Hall, the president for the American Federation of State, County & Municipal Employee Florida Council 79, is accused of "stealing union funds" to pay for office renovations.









• Engage Labor Counsel immediately

Best Practices

•Hold instructional program as to what may or may not be done with all supervisory personnel

Questions?

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THANK YOU FIRST RESPONDERS!



Florida Association of County Attorneys

2022 Legislative Update

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Copies of bills from the 2022 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.

To the extent the Governor has acted upon any bills described below, each has been updated with the applicable chapter law number assigned by the Secretary of State (if available), except where the Governor exercised his authority to veto the bill (as indicated in red).

Agriculture & Environment

Pollution Control Standards & Liability CS/HB 909 (Payne)

The bill provides the Secretary of the Department of Environmental Protection has exclusive jurisdiction in setting standards or procedures for evaluating environmental conditions and assessing potential liability for the presence of contaminants on lands classified as agricultural land pursuant to section 193.461, Florida Statutes, and being converted to a nonagricultural use. The bill prohibits the Secretary from delegating this authority to a county, a municipality, or another unit of local government. The bill does not preempt the enforcement authority of a county, a municipality, or another unit of local government through a local pollution control program. The bill does not apply to former agricultural land for which a permit has been approved by a local government to initiate development or for which development was completed on or before July 1, 2022.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-127, Laws of Florida

Floating Solar Facilities CS/CS/HB 1411 (Avila)

The bill addresses the siting of floating solar facilities, defined in section 163.3205(2), Florida Statutes, which are located on wastewater treatment ponds, abandoned limerock mine areas, stormwater treatment ponds, reclaimed water ponds, or other water storage reservoirs. It specifies that a floating solar facility shall be a permitted use (except as specified within the Everglades Agricultural Area) in the appropriate land use categories in each local government comprehensive plan and each local government must amend its land development regulations to promote the expanded use of floating solar facilities. It authorizes counties and municipalities to adopt ordinances specifying buffer and landscaping requirements for floating solar facilities, but provides that such requirements may not exceed the requirements for "similar uses" involving the construction of other solar facilities that are permitted uses in agricultural land use categories and zoning districts. The bill directs the Department of Agriculture and Consumer Services to submit recommendations to the legislature by December 2022 to provide a regulatory framework to entities that implement floating solar facilities.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-83, Laws of Florida

Powers of Land Authorities SB 442 (Rodriguez, A.)

The bill authorizes land authorities to assist the counties in which they are located in the administration of grants awarded to those counties for residential flood and sea-level rise mitigation projects, including projects for the elevation of structures above minimum flood elevations, the demolition and reconstruction of structures above the minimum flood elevations, and the acquisition of land with structures at risk of flooding.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-75, Laws of Florida

Golf Course Best Management Practices Certification CS/CS/CS/HB 967 (Truenow)

The bill requires the turfgrass science program at the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS), in coordination with the Florida Department of Environmental Protection (DEP), to administer a certification for golf course best management practices (BMPs) to ensure compliance with fertilizer BMPs. It requires UF/IFAS to provide training and testing certification programs and to issue certifications demonstrating completion of such programs. Certification expires four years after the date of issuance, with recertification available upon completion of additional continuing education. Persons certified in golf course BMPs are exempt from additional local government training and testing and exempt from local ordinances relating to water and fertilizer use, blackout periods, or restrictions, unless a state of emergency is declared. The bill also encourages UF/IFAS to create an online registry of certified persons.

Effective date: July 1, 2022. Approved by Governor:

Net Metering CS/CS/HB 741 (McClure)

The bill revises current law relating to net metering by investor-owned utilities (IOUs). Net metering allows customers who own on-site renewable energy systems, typically solar systems, to interconnect with the electric grid and be compensated for excess electricity generated on-site that is subsequently transferred to the electric grid. Under Florida's current net metering framework for IOU's, the credit customers receive on their bill equals the value of the excess energy to the utility's retail rate. The bill modifies the current net metering framework for IOUs, establishing a graduated schedule for crediting excess energy delivered to the electric grid by a customer. The schedule is based on the date a customer's net metering application is approved. For applications approved between January 2024 and December 2025, the customer's energy usage will be offset by 75% of the amount credited. For applications approved between January 2026 and December 2026, the customer's energy usage shall be offset by 60% of the amount credited. For applications approved between January 2027 and December 2028, the customer's energy usage shall be offset by 50% of the amount credited. Customers for which a net metering application is approved before January 2029 pursuant to a standard interconnection agreement will be given 20 years to continue to use the net metering rates that applied at the time the application was approved. The bill further provides that if customer-owned renewable generation in the state exceeds a certain threshold, the Public Service Commission must initiate rulemaking to adopt a new rule for net metering. The bill authorizes an IOU to petition the Public Service Commission after January 2024 for approval to impose any combination of charges to ensure that the IOU recovers the fixed costs of serving customers who own or lease renewable generation and that the general class of ratepayers does not subsidize customer-owned or leased generation. The bill directs the Public Service Commission to establish a new program to become effective January 2029, for customers for which a net metering application is approved after that date. The new program must ensure that: IOU customers who own renewable generation pay their full cost of electric service and are not crosssubsidized by the general class of ratepayers; all energy delivered by the IOU is purchased at its applicable retail rate; and all energy delivered by the customer-owned renewable generation to the IOU is credited to the customer at the IOU's full avoided costs.

Effective date: July 1, 2022.

Approved by Governor: **VETOED BY GOVERNOR**

Inventories of Critical Wetlands CS/CS/SB 882 (Brodeur)

The bill directs water management districts to work with local governments to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund. The bill provides a list of criteria to assist in determining whether a wetland is critical. The district must notify the owner of any property that it contemplates including on the list and authorizes removal of such property from the list.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-76, Laws of Florida

Environmental Management CS/CS/CS/HB 965 (Truenow)

The bill provides for the construction, operation, maintenance, and long-term management of offsite, regional, compensatory water treatment areas called "water quality enhancement areas." These areas will be used to offset impacts to state waters caused by development projects and are intended to assist permit applicants in satisfying the "net improvement" standard under section 373.414(1)(b)3., Florida Statutes, where the project will impact water bodies that have existing, ambient, water quality impairment. The bill provides a mechanism whereby water quality enhancement credits may be purchased from a water quality enhancement area to offset pollutant loads caused by development. The bill specifies that water quality enhancement areas must be regulated through permits issued by the Department of Environmental Regulation, and it directs the Department to adopt implementing rules. While the bill allows governmental entities to use water quality enhancement areas to address their water quality needs, it specifies that governmental entities may not act as sponsors to construct, operate, manage, maintain, or market enhancement credits to third parties. In addition, the bill provides that local governments may not require a permit or impose regulations governing the operation of an enhancement area. A water quality enhancement area permit applicant must provide reasonable assurances that an enhancement area will achieve defined performance criteria, benefit water quality, and assure long-term pollutant reduction. The bill specifies requirements for enhancement areas and provides that enhancement credits may be withdrawn and used only to address adverse impacts in the "enhancement service area." The bill specifies requirements for the generation of enhancement credits and provides that a local government may not deny the use of credits due to the location of the enhancement area being outside the jurisdiction of the local government. Lastly, the bill provides that whether a dwelling is owner occupied is not an eligibility criterion for a developer or homebuilder to receive density or intensity bonuses for implementing graywater technologies.

Effective date: July 1, 2022. Approved by Governor:

Cleanup of Perfluoroalkyl and Polyfluoroalkyl Substances CS/HB 1475 (McClure)

The bill provides that if the U.S. Environmental Protection Agency has not finalized its standards for Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in drinking water, groundwater, and soil by January 2025, the Department of Environmental Protection (DEP) must adopt by rule statewide cleanup target levels for PFAS in drinking water, soil, and groundwater, with priority given to PFOA and PFOS. The DEP rules may not take effect until ratified by the legislature. In addition, until the department's rule for a particular PFAS constituent has been ratified by the legislature, a governmental agency or private water supplier may not be subject to any administrative or judicial action under chapter 376 brought by any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the cost of rehabilitation, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent.

Effective date: Upon becoming law.

Approved by Governor:

Private Provider Inspections of Onsite Sewage Treatment and Disposal Systems CS/CS/SB 856 (Brodeur)

The bill authorizes the owner of an onsite sewage treatment and disposal system (OSTDS) to hire a private provider to inspect the OSTDS. It specifies that an inspection of an OSTDS may not be conducted by the person or entity that installed the OSTDS. The bill lists the qualifications to be a private provider. It requires an owner using a private provider for the inspection to notify the Department of Environmental Protection within certain timeframes before the first scheduled inspection by the department. The bill authorizes the department to audit up to 25% of private providers each year to ensure accurate performance by a private provider. The owner may proceed with work on a building, a structure, or an OSTDS, after inspection and approval by a private provider if the owner has given notice of the inspection to the department. After such inspection, work may not be delayed for completion of an inspection audit by the department unless deficiencies are found in the audit.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-105, Laws of Florida

Private Property Rights to Prune, Trim, and Remove Trees CS/SB 518 (Brodeur)

The bill clarifies section 163.045, Florida Statutes, which provides that a local government may not require a notice, application, permit, fee, or mitigation for pruning, trimming, or removing a tree on a residential property if the owner obtains documentation from an arborist or licensed landscape architect that the tree presents a danger to persons or property. The bill defines "documentation" as an onsite assessment performed in accordance with tree risk assessment procedures outlined in Best Management Practices – Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect, and signed by the arborist or landscape architect. It defines "residential property" as a single-family, detached building located on a lot actively used for single-family residential purposes and that is either a conforming use or a legally recognized non-conforming use. The bill removes reference to the term "danger" and replaces it with the phrase "unacceptable risk." It specifies a tree presents an unacceptable risk if removal is the only means of practically mitigating its risk before moderate, as determined by the tree risk assessment procedures outlined in the Best Management Practices – Tree Risk Assessment, Second Edition (2017).

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-121, Laws of Florida

Grease Waste Removal and Disposal CS/SB 1110 (Rouson)

The bill requires grease waste haulers to dispose of grease waste at disposal facilities and prohibits haulers from returning grease waste and graywater to certain grease interceptors and traps and from disposing of grease waste at locations other than disposal facilities. The bill requires the haulers to document grease waste removal and disposal with service manifests. It requires the haulers to provide to the originator and the county and municipality in which the originator is located with a copy of the service manifest within 30 days of disposal and requires inspecting entities to verify service manifests. The bill authorizes local governments to receive copies of

service manifests from haulers, receive reports of violations, collect, and retain fines for violations, and to impose license actions. The bill does not prohibit a local government from adopting or enforcing an ordinance to regulate the removal and disposal of grease waste that is stricter or more extensive than required by state law. It authorizes fiscally constrained counties and small counties to opt of out the bill's requirements.

Effective date: July 1, 2022

Approved by Governor: Ch. 2022-95, Laws of Florida

Municipal Solid Waste-to-Energy Program CS/SB 1764 (Albritton)

The bill creates the Municipal Solid Waste-to-Energy Program within the Department of Agriculture & Consumer Services and requires the department to provide financial assistance grants to municipal solid waste-to-energy facilities that have entered into power purchase agreements with electric utilities that include capacity payments, and the facility will no longer receive capacity payments under the agreement. Eligible facilities are defined in the bill. The bill also directs the department to provide incentive grants to waste-to-energy facilities to assist with constructing, upgrading, or expanding a facility. Grant funds may not be used for a residential collection system that does not separate solid waste from recovered materials.

Effective date: July 1, 2022. Approved by Governor:

Statewide Flooding and Sea Level Rise Resilience CS/HB 7053 (Environment, Agriculture & Flooding Subcommittee)

The bill establishes the Office of Resiliency within the Executive Office of the Governor and provides for the appointment of a Chief Resilience Officer. The bill requires the Department of Transportation to develop a resilience action plan for the State Highway System. The bill makes various revisions to current law relating to statewide resiliency funding and planning, including: authorizing the use of Resilient Florida Grant Program funds for preconstruction activities for projects in municipalities and counties meeting certain population thresholds; extending by one year the dates by which the Comprehensive Statewide Flood Vulnerability and Sea-Level Rise Data Set and the Assessment must be completed; requiring the Florida Flood Hub to provide tidal and storm surge flooding data to cities and counties for vulnerability assessments; and requiring the Department of Environmental Protection (DEP) to rank and include in its annual Statewide Flooding and Sea Level Rise Resilience Plan all eligible projects that were submitted and to include a detailed overview describing how the plan was developed; specifying that the DEP plan submitted in 2023 must be an update to the preliminary plan submitted in 2021; and authorizing drainage districts, erosion control districts, regional water supply authorities, and certain special districts to submit proposed projects for the plan under certain circumstances.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-89, Laws of Florida

Soil and Water Conservation Districts CS/CS/CS/SB 1078 (Hutson)

The bill addresses the subdivision of soil and water conservation districts and the qualifications for their elected governing bodies. It provides for the geographic subdivision of proposed and existing districts within a single county to match county commission or school board district boundaries. If the district is comprised of multiple counties, the bill provides for the division into five subdivisions to ensure equal geographic representation on the district's governing body. It provides for terms and timing of election for governing body members. In addition, the bill specifies that a member of a district's governing body must be an eligible voter who resides in the district and who: is engaged in (or retired from) agriculture; is employed by an agricultural producer; or owns, leases, or is actively employed on land classified as agricultural. The bill requires districts to meet at least annually in a public meeting. It provides for the automatic dissolution of districts if the governing body fails to meet as required. The bill dissolves the Baker and Martin soil and water conservation districts.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-191, Laws of Florida

Agritourism

SB 1186 (Albritton)

The bill provides that an agricultural classification pursuant to section 193.461, Florida Statutes, may not be denied or revoked solely due to the conduct of agritourism activity on a bona fide farm or the construction of a nonresidential building or facility on a bona fide farm that is used to conduct agritourism activities. Further, such buildings and facilities must be assessed under section 193.01 at their just value and added to the agriculturally assessed value of the land.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-77, Laws of Florida

Environmental Resources

SB 2508 (Appropriations Committee)

The bill makes the changes to provisions of law governing environmental resources. The bill requires each budget amendment requesting the release of state funds for the implementation of a CERP project component or a water control plan or regulation schedule required for the operation of the Central & Southern Florida Project to be contingent upon SFWMD certifying that its recommendations to the United States Army Corps of Engineers are consistent with all district programs and plans. The bill also authorizes the release of state funds for the Everglades Agricultural Area reservoir project, the Lake Okeechobee Watershed project, the C-43 West Basin Reservoir Storage project, and the Indian River Lagoon-South project. In addition, the bill requires the SFWMD to submit to the secretary of the Department of Environmental Protection (DEP) for review and approval any modifications to the district's annual work plan included in its consolidated annual report. The bill requires water shortages within the Lake Okeechobee Region to be managed in accordance with Chapters 40E-21 and 40E-22, F.A.C., and prohibits any changes to such rules from taking effect until ratified by the legislature. If the legislature fails to act during the next regular legislative session, the rules will take effect after the next regular legislative

session. The bill authorizes DEP to enter into an agreement or a contract with a public entity to expedite the evaluation of environmental resource permits or section 404 permits related to a project or activity that serves a public purpose. Any agreement or contract entered must be effective for at least three years, and DEP is required to ensure that any agreement or contract entered does not affect impartial decision-making, either substantively or procedurally. The bill expands the Rural and Family Lands Protection Program within the Department of Agriculture and Consumers Services (DACS) to allow the department to purchased full fee interests in land. The bill adds the preservation and protection of natural and working landscapes and the preservation, protection, and enhancement of wildlife corridors and linkages to the purposes for which lands may be acquired under the program. The bill provides for the transfer of the William J. "Billy Joe" Rish Recreational Park from the Agency for Persons with Disabilities (APD) to DEP. The bill reenacts s. 570.93, Florida Statutes, to require DACS to establish an agricultural water conservation program that includes a cost-share program for irrigation systems.

Effective date: July 1, 2022, except as otherwise provided. Approved by Governor: **VETOED BY GOVERNOR**

Ethics & Elections

Implementation of the Constitutional Prohibition Against Lobbying by a Public Officer CS/CS/HB 7001 (Public Integrity & Elections Committee)

The bill implements section 8(f), Article II of the state constitution, approved by voters in 2018. The provision prohibits lobbying by certain public officers both during public service and for a 6-year period following vacation of public office. The prohibition applies to lobbying before the federal government, the legislature, any state agency, or any political subdivision, and takes effect December 31, 2022. The prohibition applies to the following public officers: statewide elected officers; legislators; county commissioners; constitutional county officers and county charter officials; school board members; school superintendents; elected municipal officers; elected special district officers in special districts with ad valorem taxing authority; and secretaries, executive directors, and other administrative heads of executive branch departments. The bill defines terms that are not defined in the constitutional provision. Notable definitions in the bill include the following: lobby, compensation, and legislative action, issue of policy, issue of procurement, issue of appropriation, and administrative action. The bill provides specified exemptions from the definition of lobbying.

- "Administrative action" means any process or decision regulated by chapter 120. For a political subdivision not regulated by chapter 120, the term means any action or decision on a license, permit, waiver of regulation, development order or permit, development agreement, any quasi-judicial proceeding on land use matters, any decision subject to judicial review by petition for writ of certiorari, or any other procedure governed by existing law, ordinance, rule or regulation, except on an issue of procurement.
- "Issue of appropriation" means a legislative decision to expend or approve an expenditure of public funds, including decisions that are delegated to an administrator.
- "Issue of policy" means a change in a law, ordinance or decision, plan, or course of action designed to influence the actions of a governmental entity or to regulate conduct.

- The term "lobby" does not include the following:
 - o Providing confidential information for law enforcement purposes;
 - Appearing as a witness at the written request of a legislative body or committee, including a legislative delegation meeting;
 - Appearing or offering testimony as an expert witness;
- "Lobby for compensation" means being employed or contracting for compensation, for the purpose of lobbying, and includes being principally employed for governmental affairs to lobby on behalf of a person or governmental entity; but the term does not include the following:
 - o A public officer performing the duties of his or her public office;
 - A public or private employee or officer, acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs;
 - Advice or services to a governmental entity pursuant to a contractual obligation with the governmental entity;
 - Representation of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body, including representation in prelitigation offers, demands, and negotiations, but excluding claims bill representation;
 - Representation of a person in any proceeding on a complaint or allegation that could lead to discipline or adverse action against the person;
 - o Representation of a person with respect to a subpoena or other legal process.

Effective date: December 31, 2022.

Approved by Governor: Ch. 2022-140, Laws of Florida

Implementation of the Constitutional Prohibition Against Lobbying by a Former Justice or Judge

HB 7003 (Public Integrity & Elections Committee)

The bill provides definitions and penalties for purposes of implementing section 13(b), Article V of the State Constitution, which was approved by Florida voters in 2018. The constitutional provision, effective December 31, 2022, prohibits lobbying on issues of policy, appropriations, or procurement before the legislative and executive branches of state government by former justices and judges for a six-year period following vacation of judicial office. The bill specifies the prohibition applies to justices and judges who vacate office on or after December 31, 2022. It authorizes the Commission on Ethics to investigate and determine violations, provides a range of penalties for violations, and directs the Commission to report a violation and recommended punishment to the Governor. The bill defines various terms used within the constitutional provision, including the following terms: lobby; compensation; legislative action; lobby for compensation; issue of policy; issue of procurement; issue of appropriation; administrative action; and governmental entity.

Effective date: December 31, 2022.

Approved by Governor: Ch. 2022-141, Laws of Florida

Elections

CS/CS/SB 524 (Hutson)

The bill amends various provisions of the Florida Elections Code. It creates the Office of Election Crimes and Security within the Department of State and revises requirements for special officers who may investigate election law violations. It requires county commissioners of single-member districts to run for election after each decennial redistricting, with staggered terms as provided in section 100.041, Florida Statutes, except: Miami-Dade County; any noncharter county; any county the charter of which limits the number of terms a commissioner may serve; and any county in which voters have never approved a charter amendment limiting the number of terms a commissioner may serve regardless of subsequent judicial nullification. The bill revises retention and information posting requirements for citizens' initiative petition signature forms and authorizes review of proposed initiative amendment review processes to be halted if the validity of signatures for the petition have expired. It increases criminal penalties for ballot harvesting and crimes involving ballot petition signatures. The bill revises requirements for vote-by-mail ballots by conforming the mailing and canvassing timeframes for all mail ballot elections to those for vote-by-mail ballots in regular elections, effective January 1, 2024. The bill prohibits and preempts the use of ranked-choice voting to determine election or nomination to elective office and voids existing or future local ordinances authorizing the use of ranked-choice voting. The bill expands the prohibition against the use of private donations for elections-related expenses to include any kind of expense, including the costs of litigation related to the election. It amends provisions relating to voter registration by increasing penalties that may be assessed against thirdparty voter registration organizations for certain actions, including alteration of the voter registration application of any other person without the person's knowledge or consent. In addition, it increases the frequency for conducting voter list maintenance and adds requirements for providing information about voter registration to the Department of State. In addition, it requires inactive voters to confirm their address of legal residence before being restored to active voter status. The bill expands a criminal penalty for early disclosure of election results. Finally, the bill requires the Department of State to report annually on investigations of election law violations and to submit a plan for using identifying numbers to confirm elector identity before returning a vote-by-mail ballot.

Effective date: April 25, 2022, except as otherwise provided. Approved by Governor: Ch. 2022-73, Laws of Florida.

Limitations on Political Contributions CS/CS/HB 921 (Drake)

The bill imposes additional restrictions on expenditures by local governments relating to any issue that is subject to a vote of the electors and imposes additional restrictions on contributions to political committees relating to proposed constitutional amendments. It prohibits a local government from expending public funds for any communication that is sent to electors concerning an issue that is subject to a vote of the electors. The prohibition applies to any communication initiated by the local government, regardless of whether the communication is limited to factual information. The prohibition does not preclude any of the following: a local government from reporting on official actions of the governing body in an accurate and impartial manner; posting factual information on a government website or in printed materials; hosting and providing information at a public forum; providing factual information in response to an inquiry; or providing

information as otherwise authorized or required by law. The bill prohibits direct or indirect contributions or expenditures by a foreign national in connection with any election held in the state. In addition, the bill revises limitations on contributions to political committees that are the sponsor of a constitutional amendment proposed by initiative. Contributions to such political committees by persons who are not Florida residents and by political committees that do not maintain an office within the state are capped at \$3,000. The cap applies until the Secretary of State has issued a certificate of ballot position for the proposed amendment.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-56, Laws of Florida.

Finance & Taxation

Additional Homestead Property Tax Exemption for Specified Critical Public Service Workforce CS/CS/HJR 1 (Tomkow)

The bill proposes an amendment to the Florida Constitution to authorize the legislature, for all levies other than school district levies, to grant an additional homestead property tax exemption on \$50,000 of the assessed value of homestead property owned by classroom teachers, law enforcement officers, correctional officers, firefighters, emergency medical technicians, paramedics, child welfare services professionals, active members of the military and members of the national guard.

Effective date: January 1, 2023, if approved by voters (at least 60%) in the 2022 general election.

Homestead Property Tax Exemptions for Classroom Teachers, Law Enforcement Officers, Firefighters, Emergency Medical Technicians, Paramedics, Child Welfare Professionals, and Servicemembers CS/CS/HB 1563 (Tomkow)

The bill will implement the amendment proposed in HJR 1, if approved by Florida voters in the 2022 general election. It provides that any of the qualifying people (defined in the bill) who hold legal or beneficial title in equity to real property in Florida and make such property their or their dependent's permanent residence is entitled to an exemption of up to \$50,000 on the property's value between \$100,000 and \$150,000, for all ad valorem levies except for school district levies. The qualifying individuals must file an annual application for the exemption. The bill directs the legislature to appropriate money to fiscally constrained counties, beginning in Fiscal Year 2023-2024, to offset reductions in ad valorem revenue resulting from the new homestead exemption.

Effective date: On the date that HJR 1, *supra*, becomes effective. Approved by Governor:

Local Tax Referenda Requirements CS/CS/HB 777 (Robinson, W.)

The bill requires referenda elections related to tourist development taxes, tourist impact taxes, children's services and independent special district property taxes, increases in county and

municipal ad valorem tax millages, ninth-cent fuel tax, local option fuel taxes, and school district millage elections to be held on the day of general elections.

Effective date: October 1, 2022.

Approved by Governor:

Department of Financial Services CS/CS/CS/HB 959 (LaMarca)

The bill makes changes to several Department of Financial Services (DFS) programs. Specifically, the bill amends several laws related to a multi-year upgrade to the state's financial systems, known as the PALM Project (Planning, Accounting, and Ledger Management). The bill also reduces penalties and creates educational tools within the Division of Workers' Compensation. Particularly, the bill changes the definition of "employer" used in workers' compensation law; requires an online tutorial for persons seeking an exemption from the workers' compensation law; lengthens a deadline for non-compliant employers to submit payroll records for penalty calculation; reduces penalties for employers with no prior incidents of non-compliance; provides a required notice of rights may be sent to employees by mail or email; and eliminates a requirement for in-person payroll audits of some construction businesses. In the Division of State Fire Marshal, the bill updates boiler regulations and deletes a \$50 exam fee; changes the certification requirements for firefighters and fire safety inspectors; allows use of grant funding to pay for tools and protective clothing; and increases penalties for violations of laws related to fire protection systems. In addition, the bill makes process served upon the Chief Financial Officer (CFO) binding on an insurer when DFS notifies the insurer that process is available on a secure online portal. The bill further changes laws relating to the Division of Insurance Agent and Agency Services, to:

- Add an exemption to the examination requirement for the all-lines adjuster license;
- Allow unaffiliated insurance agents to adjust claims without surrendering their appointments;
- Revise statutes related to the use of fingerprints in background checks to comply with federal law;
- Create notice requirements for insurance agencies that stop doing business; and
- Modify existing laws for public adjuster compensation, qualifications, and bonding requirements.

Effective date: July 1, 2022, except as otherwise provided. Approved by Governor: Ch. 2022-138, Laws of Florida

Taxation

CS/HB 7071 (Ways & Means Committee)

The bill is the annual tax package containing tax holidays, tax exemptions, ad valorem changes, and other tax related provisions. As passed, the tax package includes:

• Motor Fuel Tax Holiday:

o Provides for the reduction of total fuel taxes by 25.3 cents per gallon from October 1, 2022, to October 31, 2022.

- Suspends implementation of the following levies:
 - 1 cent County Fuel Tax.
 - 1 cent Municipal Fuel Tax.
 - 15 cent State Fuel Sales Tax.
 - 8.3 cent State Comprehensive Enhanced Transportation System Levy.
- The bill also provides for \$200 million in General Revenue, contingent upon the Department of Financial Services receiving the second distribution of the state's allocation from the federal Coronavirus State Fiscal Recovery Fund.
 - Includes \$7.9 million to be transferred to offset the impact to the County Fuel Tax.

Additional Ad valorem provisions:

- An abatement for sudden building collapse events in response and limited to the Surfside tragedy.
- New tax abatement provisions for residential property rendered uninhabitable by a catastrophic event.
- An increased ad valorem property tax exemption for widows, widowers, and blind or permanently disabled homeowners from \$500 to \$5000.
- Assessment of land used in the production of aquaculture.
- Clarification of the treatment of homestead parcels where a portion of the property is used for agricultural purposes.
- Identification of additional missions that qualify for the deployed service member exemption.
- Revision of the date that determines when an affordable housing property may meet the 15-year requirement to qualify for the exemption provided by Section 196.1978(2), Florida Statutes.

Nine sales tax holidays:

- o Back to School Holiday July 25 to August 7.
- o Disaster Preparedness Holiday May 28 to June 10.
- o Energy Star Appliances Holiday September 1 to February 28.
- o Freedom Week Holiday July 1 to July 7.
- o Tools Used by Skilled Trade Workers Holiday September 3 to September 9
- o Diaper Holiday July 1, 2022, to June 30, 2023.
- o Baby and Toddler Clothing Holiday July 1, 2022, to June 30, 2023.
- o Children's Books Holiday May 14 to August 14.
- o Impact resistant Windows and Doors Holiday July 1, 2022, to June 30, 2024.

• Other Provisions:

- O Doc Stamp exemption for any federal loan related to a state of emergency declared by the Governor pursuant to s. 252.36, Florida Statutes.
- o Sales Tax Exemption for admissions to World Cup matches.
- o Reduction in the sales tax rate for new mobile homes from 6% to 3%.
- o Allows for the purchase of school buses with the School Capital Outlay Sales Surtax authorized in s. 212.055(6), Florida Statutes.

- o Total sales tax exemption for all farm trailers. Previously only the first \$20,000 of sale price was exempt for trailers weighing 12,000 pounds or less.
- Sales tax exemption for hog wire and barbed wire fencing, including gates and materials used to construct and repair such fencing, used in agricultural production on land classified as agricultural lands under s. 193.461, Florida Statutes.
- Sales tax exemption for machinery and equipment necessary in the production of electrical or steam energy resulting from the burning of hydrogen.
- o Increase in the amount of tax credits available from the Community Contribution Tax Credit Program from \$14 million to \$19 million.
- Sales tax exemption on the purchase of machinery and equipment used in the production of green hydrogen, ammonia derived from green hydrogen, or fuel cell development of energy from green hydrogen.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-97, Laws of Florida

General Appropriations Act (GAA) – FY 2023 HB 5001 (Appropriations Committee & Trumbull)

The Florida Legislature is constitutionally required to pass a balanced budget for each state fiscal year. HB 5001 appropriates \$112.1 billion and represents a 10.37% increase from the previous SFY 2022 GAA. General Revenue expenditures for the SFY 2022-2023 budget equals approximately \$43.7 billion, while trust fund expenditures total approximately \$68.4 billion. Below are some budget highlights that impact local governments.

• Health & Human Services

- Shared County/State Juvenile Detention: The SFY 2022-2023 budget estimates the counties' portion of total Shared County/State Juvenile Detention to be \$62,601,560. This represents an estimated increase of about \$833,213 from the current year budget, or approximately 1%.
- o **Community Substance Abuse and Mental Health Services:** Funded at approximately \$1.108 billion in the budget, which represents a \$56.5 million increase from the previous fiscal year.
- o Community Action Treatment (CAT) Teams: The SFY 2022-2023 budget allocates \$30.75 million, directed to DCF to contract with providers throughout the state for operation of CAT teams, which provide community-based services for children (aged 11 to 21) with mental health and/or substance abuse diagnoses, this is the same budget as the previous fiscal year.
- O Public Safety, Mental Health, and Substance Abuse Local Matching Grant Program: The SFY 2022- 2023 budget allocates \$9 million for the program, which supports county programs that serve adults or youth who are in behavioral crisis and at risk of entering the criminal justice system. This represents the same budget year funding as the previous fiscal year.

- Crime Labs: The SFY 2022-2023 budget allocates slightly over \$63 million in grants and aids to local governments for criminal investigations, which represents a 3% increase over the previous fiscal year.
- o **Homeless Programs Challenge Grants:** The SFY 2022-2023 budget allocates approximately \$3.2 million to DCF for challenge grants, which are awarded to lead agencies of homeless assistance continuums of care. This represents the same budget year funding as the previous fiscal year.

• Agriculture & Environment

- Septic-to-Sewer/Stormwater Improvements: The SFY 2022-2023 budget allocates \$125 million from the Water Protection and Sustainability Program Trust Fund for the wastewater grant program established in section 403.0673, Florida Statutes. \$10 million is provided for the Septic Upgrade Incentive Program to incentivize homeowners in Priority Focus Areas to upgrade their septic system to include nitrogen reducing enhancements.
- **Over the Example 2 Wastewater Treatment Facility Construction:** \$264.8 million.
- Water Quality Enhancement and Accountability: The budget allocates \$10.8 million for increased water quality monitoring, creation of a water quality public information portal, and for the Blue-Green Algae Task Force.
- Total Maximum Daily Loads: The SFY 2022-23 budget allocates \$50 million for Total Maximum Daily Loads, which represents a \$5 million increase over the previous fiscal year.
- O Harmful Algal Blooms: The SFY 2022-23 budget allocates \$15.6 million for the purpose of supporting the evaluation and implementation of innovative technologies and short-term solutions to combat or clean up harmful algal blooms and nutrient enrichment of Florida's fresh waterbodies, including lakes, rivers, estuaries and canals. Funds may be used for the Department's red tide emergency grant program to support local governments in cleaning beaches and coastal areas to minimize the impacts of red tide to residents and visitors. Funds may also be used to implement water quality treatment technologies, identified by the Department, near water control structures in Lake Okeechobee.
- o **Springs Restoration:** The SFY 2022-23 budget allocates \$75 million for land acquisition to protect springs and for capital projects that protect the quality and quantity of waters that flow from springs.
- O Alternative Water Supply: The SFY 2022-23 budget allocates \$50 million, all of which is contingent ARPA funds, to the water supply and water resource development grant program to help communities plan for and implement conservation, reuse and other water supply and water resource development projects.
- Everglades Restoration: Approximately \$875.9 million total; \$350 million is specifically appropriated to achieve the greatest reductions in harmful discharges to the Caloosahatchee and St. Lucie Estuaries as identified in the Comprehensive Everglades Restoration Plan.
- o Florida Forever Programs and Land Acquisition: \$168.7 million

- Florida Recreation Development Assistance Grants: \$10.7 million.
- Beach Management Funding Assistance Program: The SFY 2022-23 budget allocates \$50 million to the Department of Environmental Protection in Fixed Capital Outlay for distribution to beach and inlet management projects.
- Resilient Florida Trust Fund and programs: The SFY 2022-23 budget allocates \$504.2 million as follows:
 - \$270.9 million provided to the Department of Environmental Protection for the Statewide Flooding and Sea Level Rise Resilience Plan, years one through three, as submitted on 12/1/2021.
 - \$2 million is appropriated to regional resilience coalitions.
 - \$2.9 million for upgrading the Sea Level Impact Projection (SLIP) Study Tool, regional living shoreline restoration suitability modeling, and sea level rise modeling.
 - \$7.1 million for data collection and analysis for the Comprehensive Statewide Flood Vulnerability and Sea Level Rise Assessment.
 - \$20 million for Resilient Florida Planning Grants as specified in HB 7053, passed in the 2022 session.
 - \$1.3 million for grants and aids to local governments for the Florida Coastal Zone Management Program for priority areas including Resilient Communities, Coastal Resource Stewardship, Access to Coastal Resources, and Working Waterfronts.
 - Section 197 of the GAA provides \$200 million from the Resilient Florida Trust Fund and places it in reserve for the Resilient Florida Program pursuant to section 380.093, Florida Statutes. The department is authorized to submit budget amendments to request the release of funds pursuant to chapter 216, Florida Statutes. Up to \$20,000,000 may be used to provide grants for the Resilient Florida Grant Program. The remaining funds are provided for projects included in the Statewide Flooding and Sea Level Rise Resilience Plan to be submitted on December 1, 2022.
- o **Mosquito control programs:** The SFY 2022-23 budget allocates \$2.66 million.
- o **PFAS Testing:** The SFY 2022-23 budget allocates \$32.86 million for grants and aid to local governments for testing and remediation of any pollutant that is a perfluoroalkyl or polyfluoroalkyl substance (PFAS) or any pollutant identified by the Environmental Protection Agency Administrator as a contaminant of emerging concern.

• Transportation & Economic Development

- State Housing Initiatives Partnership (SHIP) program: The SFY 2022-2023 budget allocates approximately \$209.48 million for the State Housing Initiatives Partnership (SHIP).
- State Apartment Incentive Loan Program (SAIL): The SFY 2022-2023 budget allocates \$153.25 million for the State Apartment Incentive Loan Program (SAIL), including a \$100 million allocation for a Florida Hometown Hero Housing Program. While SB 788 established a Hometown Hero program with eligibility criteria, that bill did not pass and was withdrawn from consideration. The proviso provides that

\$100,000,000 of nonrecurring funds from the State Housing Trust Fund, traditionally used for State Apartment Incentive Loan (SAIL) Program, shall be used by the Florida Housing Finance Corporation to establish a Florida Hometown Hero Housing Program to provide down payment and closing cost assistance. No other legislation passed providing any direction on this new program or how eligibility will be determined.

- o **Job Growth Grant Fund:** The SFY 2022-2023 budget allocates \$50 million.
- o **Visit Florida:** The SFY 2022-23 budget allocates \$50 million.
- o **Small County Outreach Program (SCOP):** The SFY 2022-23 budget allocates \$114.9 million.
- o **Small County Road Assistance Program (SCRAP):** The SFY 2022-23 budget allocates \$47.7 million.
- Transportation Disadvantaged Grants and Aids: The SFY 2022-23 budget allocates approximately \$60.4 million.
- O Broadband Opportunity Program: Section 197 of the GAA provides \$400 million from the General Revenue Fund to the Department of Economic Opportunity to expand broadband Internet service to unserved areas of the state. Funds are provided for the Broadband Opportunity Program to award grants for the installation or deployment of infrastructure that supports the provision of broadband Internet service as provided in section 288.9962, Florida Statutes.
- Rural Infrastructure Fund: The SFY 2022-23 budget allocates \$31.6 million to support local rural infrastructure projects such as broadband, roads, storm and wastewater systems, and telecommunications facilities. The eligible uses of these funds include roads or other remedies to transportation impediments; storm water systems; water or wastewater facilities; and telecommunications facilities and broadband facilities. Of this appropriation, \$5 million is specifically appropriated to the Hurricane Michael impacted counties. \$25 million is appropriated from the federal Coronavirus State Fiscal Recovery Fund.
- o Rural Community Development Revolving Loan Program: The SFY 2022-23 budget allocates \$1.17 million to provide local governments with access to financial assistance to further promote the economic viability of Florida's rural communities.
- o Small County Wastewater Grants: The SFY 2022-23 budget allocates \$12 million.
- o **Small and Disadvantaged Communities Water Infrastructure Improvements:** The SFY 2022-23 budget allocates \$34.7 million.

• General Government

- o **Library Grants and Library Cooperatives:** The SFY 2022-23 budget allocates \$23.45 million.
- Fiscally Constrained County Funding: The SFY 2022-23 budget allocates \$38.8 million to offset the impacts of previously approved constitutional amendments.
- o **Emergency Distributions:** The SFY 2022-23 budget allocates \$31.1 million in emergency distributions revenue sharing for small counties.
- o **Cybersecurity Technical Assistance:** The SFY 2022-23 budget allocates \$35.4 million for local government cybersecurity technical assistance grants. The Department

- of Management Services shall administer the competitive grant program, and the State Chief Information Security Officer shall develop the criteria and process for awarding such assistance funds to municipalities and counties.
- Cybersecurity Employee Training Standards: The SFY 2022-23 budget allocates \$30 million to the Florida Center for Cybersecurity at the University of South Florida to conduct cybersecurity training for state and local government executive, managerial, technical, and general staff. Training standards are stipulated in HB 7055, passed this session.

• Back of the Budget

- Citrus Canker Litigation Payments: Section 105 of the GAA provides for \$76.9 million for the Department of Agricultural and Consumer Services to make full and final payments on all amounts due under the Class Action Settlement agreement dated January 10-11, 2022.
- Emergency Distribution: Section 150 of the GAA provides for \$5.2 million from the Local Government Half Cent Trust Fund to be distributed to counties during fiscal year 2021-22.
- o **Fiscally Constrained Counties:** Section 151 of the GAA provides \$4.4 million from General Revenue for the purpose of mitigating deficits in the Fiscally Constrained Counties and Fiscally Constrained Counties Conservation Lands Distributions as determined by the January 18, 2022, Revenue Estimating Conference.
- o **Coronavirus State Fiscal Recovery Funds:** Section 197 of the GAA outlines certain authorized appropriations for the 2021-22 fiscal year and provides for a reappropriation for 2022-23 if funds are not expended in 2021-22. (Note: Some of these amounts are included in the summaries above).
 - \$400 million for the Broadband Opportunity Program (included in the amounts above);
 - \$300 million for Land Acquisition;
 - \$205 million for Local Support Grants the process for which will be established by July 15, 2022, and awards made by September 15, 2022. No more than \$125 million shall be used for grants to local governments for one-time recognition payments of up to \$1000 per first responder;
 - \$200 million to offset revenue losses associated with the Florida Motor Fuel Tax Relief Act of 2022;
 - \$200 million for Resilient Florida Grant Program (included in the amounts above);
 - \$30 million for Small County Outreach Program (included in the amounts above);
 - \$20 million for Small County Road Assistance Program (included in the amounts above);
 - \$50 million for the Florida Job Growth Fund (included in the amounts above);
 - \$25 million for the Rural Infrastructure Fund (included in the amounts above).

Effective date: Except as otherwise provided, effective July 1, 2022, or upon becoming law, whichever occurs later; however, if the act becomes law after July 1, 2022, then it shall operate retroactively to July 1, 2022.

Approved by Governor: Ch. 2022-156, Laws of Florida – Subject to Appropriation Vetoes of \$3.132 Billion (See Attached Veto List)

Implementing the 2022-2023 General Appropriations Act HB 5003 (Appropriations Committee & Trumbull)

The bill provides the statutory authority necessary to implement and execute the General Appropriations Act for Fiscal Year 2022-2023. The statutory changes are effective for only one year and either expire on July 1, 2023, or revert to the language as it existed before the changes made by the bill. Below are some key provisions.

- Juvenile Detention Costs (Section 34) This section provides that the Department of Juvenile Justice (DJJ) is required to review county juvenile detention payments to ensure that counties fulfill their financial responsibilities required in s. 985.6865, Florida Statutes. If the DJJ determines that a county has not met its obligations, the department shall direct the Department of Revenue (DOR) to deduct the amount owed to the DJJ from the funds provided to the county under s. 218.23, Florida Statutes. The DOR must transfer the funds withheld to the Shared County/State Juvenile Detention Trust Fund.
- Affordable Housing State Apartment Incentive Loan Program/Hometown Hero Program (Section 78) This section provides that for 2022-23, funds may be used as provided in the General Appropriations Act, which directs \$100 million in proviso for line 2289 toward a Hometown Hero program for down payment assistance and closing costs established by the Florida Housing Finance Corporation. No substantive language providing for criteria for this new program was passed in any legislation during the 2022 session.
- Florida State Guard (Section 80) This section implements line items 3024 through 3033A of the General Appropriations Act, which provides \$10 million to fund the Florida State Guard (FSG). Section 80 creates s. 251.001, relating to the Florida State Guard Act. The bill establishes the FSG to operates at the direction of the Governor, and which may have a maximum of 400 members. The FSG may be activated when the Florida National Guard is in active federal service and the Governor has declared a state of emergency. The bill provides for the Adjunct General to establish the qualifications for persons to serve in the FSG, requirements for training and equipping of the Guard. The bill also provides for reimbursement and compensation of FSG members. Because the FSG in created through the implementing bill, the FSG is only approved for the 2022-23 State Fiscal Year.
- Financial Interest Disclosure Requirements Modified for 2022-23 (Sections 91 and 93)

 Section 91 delays the date where all financial disclosures must be provided electronically from January 1, 2022, to January 1, 2023. It also delays the time when a federal tax return may no longer be used for the purpose of reporting income from January 1, 2022, to January 1, 2023. In addition, Section 93 provides that all full and public disclosures filed electronically before the effective date of the implementing act are deemed filed. The bill also requires the Commission on Ethics to post a notice on its website that no additional electronic filings will be accepted after the effective date of the implementing act through December 31, 2022.
- Prohibition on Agreements or Grants from the Russian Federation (Section 96) This section amends s. 288.860, Florida Statutes, to provide that for the 2022-23 fiscal year, a state agency, political subdivision, public school, state college, or state university may not

enter into any agreement with or accept any grant from the Russian Federation. This subsection expires July 1, 2023.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-157, Laws of Florida

General Government

Florida Housing Finance Corporation CS/HB 196 (Rodriguez, A.)

The bill designates the Florida Housing Finance Corporation (FHFC) as the agency authorized to make constitutional determinations of fiscal sufficiency in connection with its issuance of bonds, rather than the State Board of Administration. It amends definitions and provisions relating to the qualified contract process by which FHFC seeks a purchaser for an affordable housing development to maintain the property's use for affordable housing during the extended use period. It specifies what happens to the affordable housing development's extended use period if a qualified contract does not close. If the contract does not close due to actions of the owner, then the extended use period continues, and the owner is considered to have waived all rights to a qualified contract request. If the contract does not close for other reasons, and FHFC is unable to find another purchaser within a 1-year period, then the extended use period for the property ends. The bill repeals provisions that limit the Elderly Housing Community Loan program loans to \$750,000 per housing community.

Effective date: July 1, 2022. Approved by Governor:

Temporary Underground Power Panels CS/HB 481 (Duggan)

The bill prohibits counties and municipalities from enacting regulations that prevent electric utilities from installing temporary underground power panels that meet the requirements of the National Electrical Code, and prevents counties and municipalities from requiring permanent inspections if the local government has already performed a temporary inspection. If residential construction is going to ultimately receive power through an underground service line, temporary underground power panels are used in lieu of temporary power poles to provide power during the residential construction process.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-82, Laws of Florida

Religious Institutions CS/SB 254 (Brodeur)

The bill prohibits emergency orders issued under chapter 252, Florida Statutes, from directly or indirectly prohibiting a religious institution from conducting regular religious services or activities. A general provision in an emergency order that applies uniformly to all entities in the affected jurisdiction may be applied to a religious institution if the provision is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling

governmental interest. The bill incorporates the definition of the term "religious institution" used in section 496.404, Florida Statutes. The term "means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation."

Effective date: July 1, 2022. Approved by Governor:

Construction Liens SB 352 (Hooper)

The bill revises the requirement to file a notice of commencement for the repair or replacement of an existing heating or air conditioning system by increasing the threshold amount for which a notice of commencement is required. The bill specifies the notice of commencement must be filed only when the direct contract for such work is more than \$15,000 (the current law threshold was \$7,500).

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-126, Laws of Florida

Judicial Notice

CS/CS/SB 634 (Bradley)

The bill authorizes courts to take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created. It specifies that a party intending to offer such information in evidence must file notice of intent within a reasonable time and specifies the required content for the notice. For civil cases, the bill provides a rebuttable presumption that the information should be judicially noticed, which may be overcome if the court finds the information does not fairly and accurately portray what is being offered or that it otherwise should not be admitted under the Florida Evidence Code. For criminal cases, the bill requires the court to instruct the jury that the jury may or may not accept the noticed facts as conclusive.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-100, Laws of Florida

Alarm Systems

CS/CS/SB 1140 (Perry)

The bill reduces the current law training requirements for false alarm prevention for persons holding certain certifications. It includes video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency in the definition of "low-voltage alarm system project." The bill creates a simplified permitting process for fire alarm system

projects. It provides that a local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project and requires the local agency to issue the permit in person or electronically. The bill provides a local enforcement agency must require at least one inspection of a fire alarm system project and requires a contractor to keep a copy of the plans and specifications at a fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-124, Laws of Florida

Building Regulation CS/CS/HB 423 (LaMarca)

The bill makes several changes to building regulations, including changes concerning internships and licensing of building inspectors and plans examiners, private providers, demolition building permits, and requests for information by building departments regarding the review of applications for building permits.

In particular, with respect to building inspectors and plans examiners, the bill:

- Requires the Building Code Administrators and Inspectors Board (BCAIB) to create a rule allowing partial completion of an internship program to be transferred to any authorized internship among other jurisdictions, private providers, and private provider firms.
- Prohibits the BCAIB from placing any special condition or requirement on a provisional certificate that such certificate holder be employed by a municipality, county, or other local government agency.
- Allows a person to sit for the building inspector or plans examiner certification test by completing a 4-year internship with a private provider or a private provider's firm that performs building code inspector or plans review services, while under the direct supervision of a licensed building official.

Relating to "demolition" building permits, the bill adds a new subsection (25) to s. 553.79, Florida Statutes, that:

- Provides that a local government may not prohibit or restrict a private property owner from obtaining a demolition permit for a single-family building located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by FEMA for purposes of participating in the National Flood Insurance Program in certain flood elevations if the flood zones and the permit comply with other provisions of the Florida Building Code, Florida Fire Prevention Code, and Life Safety Code requirements and applicable local amendments.
- Limits the review process of an application for such demolition permit. Specifically, the permit application may only be reviewed administratively for compliance with the Florida Building Code, Florida Fire Prevention Code, and Life Safety Code requirements, local amendments, and other regulation applicable to similarly situated parcels. The application of additional land development regulations or public hearings are prohibited. In addition,

- a property owner may not be penalized for a demolition that was in compliance with the demolition permit.
- Prohibits a local government from imposing additional regulatory or building requirements on any new single-family residential structure constructed on the site of the demolished structure that would not be applicable to a similarly situated vacant parcel.
- Exempts certain historic buildings from such demolition permits.

The bill makes several changes relating to private providers, including:

- Allowing a person holding a provisional certificate under Part XII of Chapter 468, to be a duly authorized representative for a private provider if under the direct supervision of a licensed building official.
- Defining the "reasonable administrative fee" that may be charged by a local jurisdiction when an owner or contractor retains a private provider for plans review or building code services.
- Requiring a local government, when an owner or contractor retains a private provider, to
 provide equal access to all permitting and inspection documents to the private provider,
 owner, and contractor, if access is provided using software that protects exempt records
 from disclosure.
- Increasing the amount of time, from 2 to 10 business days, that local building officials must issue a certificate of occupancy or a notice of deficiencies for permits unrelated to single-or two-family dwellings.
- Providing that if a notice of deficiency is not issued within the required time-period (10 business days or 2 business days):
 - A certificate of occupancy or certificate of completion is "automatically" granted, and "deemed" issued as of the next business day; and
 - o Local building officials must provide the applicant with a certificate of occupancy or certificate of completion within 10 days it is automatically granted and issued.

The bill addresses the process of building permit applications under s.553.792. Specifically, a local government:

- May not request additional information more than three times from an applicant unless the applicant waives the limitation in writing. The local government must:
 - o First request: If the applicant provides the requested information within 30 days, the local government must review the information and take certain actions within 15 days after receiving the additional information;
 - Second request: If the local government makes a second request for additional information to complete the application and the applicant provides such information within 30 days, the local government must review the information and act within 10 days;
 - O Before making a third request for additional information, the local government must meet with the applicant to resolve any outstanding issues. If the local government makes a third request for additional information and the applicant provides the information within 30 days, the local government must, within 10 days, deem the

application complete and either approve the application, approve the application with conditions, or deny the application unless the applicant has waived the limitation in writing.

• If the applicant believes a request for additional information to be unauthorized, the local government must, at the applicant's request, process the application and either approve the application, approve the application with conditions, or deny the application.

Finally, the bill authorizes an owner, a builder with a valid permit issued by a local government for a fee, or an association of Florida owners and builders with building permits issued by local governments for a fee, to bring a civil action against the local government issuing the building permit to enforce the requirement in s. 553.80(7)(a)2., Florida Statutes, that a local government must use excess funds generated by building code enforcement for the lawful purposes described.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-136, Laws of Florida

Evidence of Vendor Financial Stability CS/CS/HB 1057 (Andrade)

The bill amends s. 287.057, Florida Statutes, to address financial stability requirements when procuring commodities or contractual services. Specifically, the bill provides that when determining whether a vendor is a responsible vendor, an agency may establish financial stability criteria and require a vendor to demonstrate its financial stability. If an agency requires a vendor to demonstrate its financial stability during a competitive solicitation process, the agency must accept any of the following documents as evidence of such stability:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.
- Documentation of an investment grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.
- For a vendor with annual revenues exceeding \$1 billion, a letter containing a written declaration, pursuant to s. 92.525, Florida Statutes, issued by the chief financial officer or controller attesting that the vendor is financially stable and meets the definition of financial stability.
- For a vendor with annual revenues of \$1 billion or less, documentation, based on criteria established by the agency, evidencing that the vendor is financially stable and meets the definition of financial stability. The criteria established by the agency must be reasonably related to the value of the contract and may not include audited financial statements.

The bill does not prohibit agencies from accepting additional documentation as evidence of financial stability and it does not preclude an agency from requiring a performance bond for the duration of the contract, when appropriate. The bill defines the term "financial stability" to mean, at a minimum, having adequate income and capital and the capacity to efficiently allocate resources, assess, and manage financial risks, and maintain financial soundness through the term of the contract.

Effective date: Upon becoming law.

Approved by Governor:

Service of Process CS/CS/SB 1062 (Bradley)

The bill amends laws governing service of process as follows:

- For a General Partnership, the bill provides that, after one attempt at service of process on any partner, registered agent, or designated employee, a partnership may be served by delivery of process to a person in charge of the partnership during regular business hours.
- For a Limited Liability Partnership, process must first be attempted on the registered agent. If service on the registered agent fails, process may be made on any partner. If no partner is available during regular business hours, any partner may designate an employee to accept service of process. If service on a partner or designated employee fails, process may be served on the person in charge of the partnership during regular business hours. If all these fail, process may be served upon the Secretary of State or by any other method approved by court order.
- For a Limited Partnership, the bill provides that service of process on a domestic limited partnership must first be attempted by delivery to the registered agent. If that service fails, service may be on any general partner of the limited partnership. If that fails, service may be made on the Secretary of State or by any other method approved by court order. The bill also provides that a notice or demand required to be delivered to the limited partnership which is not service of process may be delivered to any general partner, the registered agent, or to any other address that is the principal place of business in this state.
- For a Limited Liability Company, the bill keeps the registered agent first and the Secretary of State as a last resort, and provides that any other person listed publicly in the company's latest annual report, as most recently amended, is an additional alternative to any manager of a manager-managed limited liability company or any member of a member-managed limited liability company. As a last resort, the bill adds any other method approved by court order as an alternative to service on the Secretary of State. With respect to canceling certificates of authority, the bill adds a requirement to furnish and update, as necessary, an email address. When converting from one business entity to another, and the converting entity is a limited liability company, the bill adds a requirement to furnish an email address with the mailing address.
- For a Corporation, the bill requires that the first attempt at service of process be delivery to the registered agent. If service on the registered agent fails, service may be by delivery to the chair of the board of directors, the president, any vice president, the secretary, the treasurer, or any other person listed on the most recent corporate filing with the Secretary of State. If service on these fail, service may be by substituted service on the Secretary of State or by any other method approved by court order. The bill repeals the duty to go down the hierarchy of officers and repeals the "any employee" option. With respect to a foreign corporation canceling its certificate of authority, the bill adds a requirement to furnish an email address as a part of the withdrawal and requires a corporation to also commit to future updates to the email address.

- Regarding the alternative use of Commercial Delivery Services, the bill amends several statutes to add that delivery by a commercial firm regularly engaged in the business of document or package delivery may be used as an alternative to U.S. postal delivery for:
 - Service of process on agents of nonresidents (natural persons or partnerships) doing business in the state;
 - o Substituted service of process by service on the Secretary of State; and
 - o Presuit service of a notice of intent to file a medical negligence action.
- Regarding Offices of Registered Agents, the bill amends s. 48.091, Florida Statutes, to: require every form of business entity to designate a registered agent and a registered office for service of process; require the designated registered agent and office to be open from at least from the 10 a.m. to noon; repeal the sign posting requirement; specify that service on a registered agent may be by delivery to any employee of the registered agent; and codify the commonly understood duty of a registered agent to promptly forward the process and any related papers to the responsible person in the business entity.
- For a Dissolved Entity, the bill confirms that service on a dissolved corporation is the same as an active corporation, as amended by the bill. Additionally, the bill adds that service on a dissolved corporation may also be delivered to an existing court-appointed trustee, custodian, or receiver, and adds that the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic for-profit corporation. The bill provides that service on a dissolved limited liability company is the same as an active limited liability company. Process may be delivered to a court appointed liquidator, trustee, or receiver of a dissolved limited liability company, and the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic limited liability company. Finally, the bill adds that service on a dissolved limited partnership is the same as service on an active limited partnership.
- Regarding Court-Ordered Alternative Means of Service of Process, the bill provides flexibility where, despite due diligence, the party has been unable to personally serve process on any of the following forms of business entity:
 - o A domestic or foreign corporation;
 - A domestic or foreign general partnership, including a limited liability partnership;
 - o A domestic or foreign limited partnership, including a limited liability limited partnership; or
 - o A domestic or foreign limited liability company.

Where the entity cannot otherwise be served, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity actual notice of the suit. Other manners of service may include service electronically by email or other technology by any person authorized to serve process or by an attorney. The court may authorize other methods of service consistent with the principles of due process. Additionally, in suits involving a breach of contract, the court may authorize the parties to effectuate service in the manner provided in the contractual notice provision of the contract.

• For Service on Public Agencies and Officers, the bill provides that process against any municipal corporation, agency, board, or commission, department, or subdivision of the

state or any county which has a governing board, council, or commission or which is a body corporate must be served on the registered agent. However, if the entity does not have a registered agent, or if the registered agent cannot be served after one good faith attempt, the entity must be served:

- On the president, mayor, chair, or other head thereof, and in the absence of the aforementioned:
- On the vice president, vice mayor, or vice chair, and in the absence of the aforementioned;
- On any member of the governing board, council, or commission, the manager of the governmental entity, or an in-house attorney for the governmental entity, and in the absence of the aforementioned;
- On any employee of the governmental entity at the main office of the governmental entity.
- *Regarding substituted service through the Secretary of State*, the bill:
 - o Allows the Secretary of State to agree to receive service of process electronically;
 - Repeals the \$8.75 fee payable to the Secretary of State;
 - Expands the options for delivery by adding the option to use a commercial firm regularly engaged in the business of document or package delivery as an alternative to mailing;
 - Requires that the party send a copy by e-mail or other electronic means if the parties have recently and regularly used any of those means of communication;
 - o Requires that the party send a copy by mail or commercial delivery of the process to the last known address of the party being served;
 - Requires the party to file with the court proof of delivery from the post office or commercial service, unless the party being served is actively refusing or rejecting delivery;
 - o Requires the party to file an affidavit showing due diligence in the search for the party being served and the need for substituted service, together with any return receipt or other proof of mailing or delivery, within 40 days after delivery to the Secretary of State. The court may extend the 40 days; and
 - Establishes that the date of service of substituted process is the date of delivery to the Secretary of State. The Secretary of State must maintain a record of each process delivered.

The bill also defines the due diligence necessary before resorting to substituted service on a natural person as:

- O Diligent inquiry and an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;
- Reasonable use of the knowledge at the party's command, including knowledge obtained by the diligent inquiry; and
- An appropriate number of attempts to serve the party, taking into account the particular circumstances, during such times when and where the party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

- For Substituted Service on Nonresidents and Foreign Business Entities doing business in the state or who are concealing their whereabouts, the bill repeals the application of this section to former residents, as service on them is provided in statutes allowing for service outside of the state. If a nonresident business entity has properly registered with the Department of State, the bill requires that service of process first be attempted by delivery to the registered agent, then to the entity officials as appropriate to the form of entity, and only after failing in all such attempts, by substituted service on the Secretary of State.
- Regarding Unknown Parties in Possession of Rental Property, the bill creates a new section of law limited to service of process on an unknown person in possession of real property. The clerk of court is required to issue a summons in the name of "Unknown Party in Possession." The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend. On each attempt the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the time for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry discovers the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the clerk may issue a writ of possession against an unknown person and the sheriff may remove any person on the property.
- For Personal Service Outside of Florida, the bill limits application of this section to service within the other states and within U.S. territories and commonwealths, and creates a new section governing service of process upon a person or entity in a foreign country. The bill provides that service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, by any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, service of process may be made by any method reasonably calculated to give actual notice of the proceedings. Reasonable methods are those prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction, those directed by the foreign authority in response to a letter rogatory or letter of request, or unless prohibited by the foreign country's law, by delivering a copy of the summons and of the complaint to the individual personally or by using any form of mail which the clerk addresses and sends to the party, which requires a signed receipt. Pursuant to motion and order by the court, service of process may be by other means, including electronically by email or other technology, if the party seeking service shows such form of service is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement.
- For service by Publication, the bill amends s. 49.011, Florida Statutes, to expand the cases in which service of process by publication is permitted. The bill authorizes service by

- publication in a paternity case upon the legal mother when there is no legal father established.
- Regarding Presuit Notice in a Medical Negligence Action, the bill expands the methods of service of the presuit notice to allow United States mail service with a tracking number, use of an interstate commercial mail carrier or delivery service, or service by any person authorized by law to serve process. The bill also specifies that delivery to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service of the presuit notice was made. If the question of proper service is made, the court must conduct an evidentiary hearing, and if service is challenged, it must be challenged in the first response to the complaint. The bill also provides that tolling of the statute of limitations begins on the date of mailing or the date of the first attempt at service by the certified process server, tolling applies to all defendants, and the 90-day investigation period starts upon delivery of the notice rather than upon mailing.
- The bill amends ss. 48.151, 495.145, and 605.09091, Florida Statutes, to make conforming changes to provisions made by the bill.

Effective date: January 2, 2023, except the changes regarding presuit notice in medical malpractice actions, which are effective upon becoming law.

Approved by Governor: Ch. 2022-190, Laws of Florida

Local Business Protection Act CS/SB 620 (Hutson)

The bill allows a business that has been engaged in a lawful business in a municipality or county for at least 3 years to claim business damages from the local government if it enacts or amends an ordinance or charter provision that will cause a reduction of at least 15 percent of the business' profit as applied on a per location basis of a business operated within the jurisdiction. The bill provides three ways for a municipality or county to cure the business' claim and avoid paying damages: repeal the ordinance or charter provision; amend the ordinance or charter provision; or grant a waiver to the business from enforcement of the ordinance or charter provision. The bill provides exemptions from business damages claims for specified types of ordinances and charter provisions: ordinances required to comply with, or expressly authorized by, state or federal law; emergency ordinances, declarations, or orders adopted pursuant to the state Emergency Management Act; a temporary emergency ordinance which remains in effect for no more than 90 days; ordinances or charter provisions enacted to implement: Part II of chapter 163 (including zoning, development orders and development permits); the Florida Building Code; the Florida Fire Code; a contract or an agreement, including contracts or agreements relating to grants or other financial assistance; debt issuance or refinancing; procurement; and budgets or budget amendments, including revenue sources necessary to fund the budget. The bill specifies that in an action to recover damages, a court may award attorney fees and costs to the prevailing party. The bill is prospective and applies to ordinances and charter provisions enacted or amended after the legislation becomes law.

Effective date: Upon becoming law.

Approved by Governor:

Independent Hospital Districts CS/SB 1260 (Gruters)

The bill authorizes independent hospital districts to evaluate potential conversion of the district to a nonprofit entity under specified circumstances. It requires the district to negotiate and complete an agreement with the governing body of each affected county before converting the district to a nonprofit entity and prohibits members of the county governing bodies that are parties to such agreements from serving on the board of the successor nonprofit entity.

Effective date: July 1, 2022. Approved by Governor:

Florida Tourism Marketing SB 434 (Hooper)

The bill extends the statutory provisions of the VISIT FLORIDA state tourism program, currently set to repeal in 2023, until October 1, 2028.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-92, Laws of Florida

Education

CS/CS/SB 758 (Diaz)

The bill modifies and creates provisions relating to charter school authorization, facilities, sponsor oversight, and distribution of funds. The bill also amends s. 1000.4205, Florida Statutes, authorizing who may visit schools, to specify that any member of the legislature may visit any public school in his or her legislative district. Subject to an appropriation, the bill creates a seven-member Charter School Review Commission (CSRC) within the Department of Education (DOE) to review and approve applications for charter schools overseen by district school boards.

The bill expresses legislative intent that charter school students are as important as all other students in the state, and comparable funding levels from existing and future sources should be maintained for charter school students. The bill provides that a charter school that receives a school grade lower than a "B" in the most recent graded school year, and has met the terms of its program review with no grounds for nonrenewal being expressly found, must be granted no less than a 5-year charter renewal, subject to specified school grade provisions. The bill requires a 15-year charter renewal for a charter school that has received a school grade of "A" or "B" in the most recent graded school year and meets other specified conditions. The bill specifies that a charter school must be under a deteriorating financial condition or financial emergency for a sponsor to not renew or terminate a charter for fiscal mismanagement. The bill also removes "other good cause shown" as grounds for the termination or nonrenewal of a charter school.

The bill provides that an interlocal agreement or ordinance that imposes a greater regulatory burden on charter schools than school districts is void and unenforceable. A charter school may use an interlocal agreement, including provisions relating to the extension of infrastructure, entered by a school district for the development of district schools. The bill provides that any entity contributing toward the construction of charter school facilities created to mitigate the educational impact of

residential development must receive credit toward any educational impact fees or exactions to the extent that the entity has not received credit under school concurrency requirements for the contribution. The bill specifies that any facility or land owned by a public postsecondary institution or facility used as a school or childcare facility may be used as a charter school without obtaining a special exemption from existing zoning and land use designations.

Subject to appropriation, the bill creates the Florida Institute for Charter School Innovation (Institute) at Miami Dade College (MDC) to improve charter school authorization in this state. The bill directs the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to complete an analysis of the distribution of capital outlay and federal funds to charter schools. The bill also prohibits a sponsor from withholding any administrative fee against a charter school for funds specifically allocated by the legislature for teacher compensation.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-144, Laws of Florida

Real Property Rights CS/SB 1380 (Rodriguez, A.)

The bill amends Marketable Record Title Act (MRTA) to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.
- Allow revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

A person who wishes to protect a property interest potentially extinguished by the change to MRTA has until July 1, 2023, to file a Statement of Marketable Title Action in the public records to preserve the property interest. A charter county, as defined in s. 125.011(1) (Miami-Dade County), that wishes to protect a property interest which may be extinguished by the changes to MRTA, must similarly file a Statement of Marketable Title Action in the public records in order to preserve the property interest. The changes to MRTA are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges whether imposed or accepted, before, on, or after the act's effective date. The bill also creates s. 715.075, Florida Statutes, to provide that an owner or operator of a private property used for motor vehicle parking may establish rules and rates that govern private persons parking motor vehicles on such private property, including charges for violating the parking rules. The rules and rates must be posted and clearly visible to persons parking on such private property. Any invoice for issued for parking charges must contain the following statement: "THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES." A county or municipality may not enact an ordinance or a regulation restricting or prohibiting the right of a private property owner or operator

to establish rules, rates, and fines governing parking on the private property. The bill voids any local ordinance or regulation that violates this new section of law.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-171, Laws of Florida

Residential Picketing CS/HB 1571 (Maggard)

The bill makes it unlawful for a person to picket or protest before or about the dwelling of any person with the intent to harass or disturb that person in his or her dwelling. The bill requires law enforcement, before arresting a person for violating this prohibition, to go as near to the person as may be done safely and command the person to immediately disperse. If the person does not disperse, then he or she may be arrested.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-118, Laws of Florida

Legal Notices

CS/HB 7049 (Judiciary Committee, Fine, & Grall)

The bill allows a local governmental agency the option to publish legal notices on a publicly accessible website owned or designated by the county instead of in a print newspaper. The bill defines the terms "governmental agency" to mean a county, municipality, school board, or other local government unit or political subdivision of the state and also defines the term "publicly accessible website" to mean a county website or private website designated by the county for publication of legal notices. All advertisement on a publicly available website must be searchable and contain the date in which the advertisement was first published on the website.

A governmental agency may use the publicly accessible website of a county in whose jurisdiction it lies if the costs of publishing the required advertisements or public notices is less than publishing in a newspaper. A governmental agency with at least 75 percent of its population located in a county with a population less than 160,000 may use the publicly accessible website of the county if the governmental agency, at a public hearing that is noticed in a newspaper, determines the public has sufficient access to the internet by broadband service and that publishing public notices on the county website will not unreasonably restrict public access.

A special district that spans the geographic boundaries of the county is authorized to publish its public notices on the publicly accessible website of the county it spans. Any governmental agency that publishes its advertisements and public notices on a publicly accessible website must once per year provide notice in a newspaper of general circulation, or another publication that is mailed or delivered to all residents and property owners throughout government's jurisdiction, indicating that residents may receive required advertisements or notices from the government by first-class mail or email after registering their name and address or email address with the government agency. The bill requires each government agency to maintain a registry of the property owners or residents that requested in writing to receive required advertisement or public notices by first-class mail or email. A link to all advertisements and public notices on the publicly accessible website must be

conspicuously placed on the homepage or on a page accessible through a direct link from the homepage.

If a governmental agency has a governmental access channel, the agency may provide a summary of advertisements and public notices that are published on its publicly accessible website. In addition, public bid advertisements made on a publicly accessible website must include a method to accept electronic bids. The bill reverts the criteria a newspaper must satisfy to be qualified to publish all legal notices back to the criteria in place before the passage of Chapter 2021-17, Laws of Florida, with the exception that newspapers qualified to publish legal notices are no longer required to be for sale. Finally, the bill eliminates the obligations of the Florida Press Association relating to equitable legal notice access by minority populations.

Effective date: January 1, 2023.

Approved by Governor: Ch. 2022-103, Laws of Florida

Cybersecurity

CS/HB 7055 (State Administration & Technology Appropriations Subcommittee)

The bill requires state agencies and local government entities to report cybersecurity and ransomware incidents to the Cybersecurity Operations Center (CSOC) and the Cybercrime Office of the Department of Law Enforcement. The bill prohibits a state agency or local government experiencing a ransomware incident from paying or otherwise complying with the demanded ransom. The bill defines the level of severity of a cybersecurity incident in accordance with the U.S. Department of Homeland Security's National Cyber Incident Response Plan. The bill differentiates reporting requirements based on the level of severity of a cybersecurity incident. The bill requires the Legislature to only be notified of high severity level cybersecurity incidents. Local government entities are required to adopt cybersecurity standards that align with the National Institute for Standards and Technology and to notify the Florida Digital Service when such standards are adopted. Counties with a population of 75,000 or more, and municipalities with a population of 25,000 or more, must adopt the standards by January 1, 2024. Counties with a population less than 75,000, and municipalities with a population less than 25,000, must adopt the standards by January 1, 2025. The bill requires each local government to notify FLDS when it has adopted the standards. The bill requires FLDS to develop a basic and advanced cybersecurity training curriculum. All local government employees with access to the local government's network must complete the basic training curriculum, and local government technology professionals and employees with access to highly sensitive information must complete the advanced training curriculum. The trainings must be completed by employees within 30 days of commencing employment and on an annual basis thereafter. The bill authorizes FLDS to provide the cybersecurity trainings in collaboration with the Cybercrime Office, a private sector entity, or an institution of the State University System. The bill requires the advanced cybersecurity training curriculum provided to certain state and local government employees to include training on the identification of each cybersecurity incident severity level. The bill expands the purpose of the Cybersecurity Advisory Council (CAC) to include advising local governments on cybersecurity and requires the CAC to examine reported cybersecurity and ransomware incidents to develop best practice recommendations. The bill requires the CAC to submit an annual comprehensive report regarding ransomware to the Governor and legislature. Lastly, the bill establishes penalties and fines for certain ransomware offenses against a government entity.

Effective date: July 1, 2022. Approved by Governor:

Information Technology

SB 2518 (Appropriations Committee)

The bill separates the State Data Center from the Florida Digital Service (FDS) within the Department of Management Services (DMS). All FDS duties and responsibilities related to the State Data Center are assigned directly to DMS. The bill designates the Northwest Regional Data Center at Florida State University as an official state data center and transfers all current State Data Center resources, contracts, and assets to the Northwest Regional Data Center. The bill requires the secretary of DMS to contract with the Northwest Regional Data Center for the management and operation of the State Data Center. The bill clarifies the definition of a service level agreement between a customer entity and DMS to include a provider of data center services. The bill extends the statutory deadline for FDS to complete the state data catalog and state data dictionary from October 1, 2021, to December 1, 2022.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-153, Laws of Florida

Florida Retirement System

HB 5007 (Appropriations Committee)

The bill modifies the Deferred Retirement Option Program (DROP) to allow a member of the Special Risk Class, who is a law enforcement officer and a participant in DROP on or after July 1, 2022, to participate for up to an additional 36 calendar months beyond the 60-month program period if he or she enters DROP on or before June 30, 2028. The bill also establishes the contribution rates, including the system's unfunded actuarial liabilities, paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2022. The bill also increases the percent of employer-paid contributions allocated to each active member's investment retirement plan account by 3% of the member's compensation.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-159, Laws of Florida

State Group Insurance Program HB 5009 (Appropriations Committee)

The bill amends several statutes to conform to the fiscal year 2022-2023 General Appropriations Act. Specifically, the bill provides that eligible former employees of state government may reenroll in the State Group Insurance (SGI) Program within 24 months after separation from employment which occurred on or after July 1, 2022. All eligible former employees must pay the same premiums as early retirees. The bill ratifies DMS' rule to create nine HMO regions across the state, amends current law to allow an SGI enrollee's cost-share to be waived, subject to IRS limits, in the Price Transparency Program, and repeals the SGI Program's Metal Tier health plans.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-160, Laws of Florida

Inflation Fund

HB 5011 (Appropriations Committee and Trumbull)

The bill creates the Inflation Fund within the Executive Office of the Governor. The fund is established as the primary funding source to offset budget amendments by an agency or the judicial branch which are necessary to counter increased inflation that exceeds funds appropriated in the General Appropriations Act. Subject to review, and unless terminated sooner, the Inflation Fund is terminated on July 1, 2026.

Effective date: July 1, 2022.

Approved by Governor: **VETOED BY GOVERNOR**

Individual Freedom CS/HB 7 (Avila)

The bill specifies that subjecting any individual, as a condition of employment, membership, certification, licensing, credentialing, or passing an examination, to training, instruction, or other required activity; or subjecting any K-20 public education student or employee to training or instruction, that espouses or compels the individual to believe any of the following concepts constitutes discrimination:

- Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the individual played no part, committed in the past by other members of the same race, color, sex, or national origin.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin.

The bill provides that the foregoing may not be construed to prohibit discussion of the concepts listed therein as part of a course of training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

In addition, the bill makes various changes to required instruction and curriculum for public school students relating to "principles individual freedom," African-American history, and character development. It authorizes age-appropriate discussion and curricula regarding such topics as slavery, racial oppression, racial segregation, and racial discrimination, but prohibits indoctrination or persuasion to a particular point of view inconsistent with the principles of individual freedom described in the bill or with state academic standards.

Effective date: July 1, 2022.

Signed by Governor: Ch. 2022-72, Laws of Florida.

[Special note: On April 22, 2022, six plaintiffs filed a civil action in the United States District Court for the Northern District of Florida, against Governor DeSantis, Attorney General Moody, then Commissioner Richard Corcoran, and other state education officials, alleging HB 7 violates the First Amendment rights of teachers, students, and employers; and the act is also unconstitutionally vague in violation of the Fourteenth Amendment. The case style is: *Donald Falls, et al. v. Ron DeSantis, et al.*, Case No. 4:22-cv-00166-MW-MJF.]

Land Use & Growth Management

Residential Development Projects for Affordable Housing CS/CS/SB 962 (Bradley)

The bill expands a current law provision that authorizes municipalities and counties to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial uses. It provides that if a parcel is zoned for commercial or industrial use, the municipal or county approval may include any residential development project, including a mixed-use residential development project, so long as at least 10 percent of the units are for affordable housing and the developer agrees to forego funding under s. 420.5087, Florida Statutes.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-176, Laws of Florida

School Concurrency CS/CS/CS/SB 706 (Perry)

The bill amends s. 163.3180(6)(h), Florida Statutes, to provide that school concurrency is deemed satisfied when a developer tenders a written, legally binding commitment, rather than an executed commitment, to provide mitigation proportionate to the demand created by a development. The district school board must notify the local government that capacity is available for the development within 30 days after receiving the developer's legally binding commitment. In the addition, the bill provides that any developer paid mitigation, rather than being directed toward a school capacity improvement in the district's 5-year education facilities plan, must be set aside and not spent until an improvement is identified that satisfies the demand created by the development.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-122, Laws of Florida

Public Records & Public Meetings

Public Records/Identity of a Witness to Murder HB 7015 (Government Operations Subcommittee)

The bill removes the scheduled repeal of exemption from the public records requirements for criminal intelligence and criminal investigative information that reveals personal identifying information of a witness to a murder for a specified period.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-88, Laws of Florida

Public Records/Homelessness Counts and Information Systems SB 934 (Gruters)

The bill provides an exemption from public records requirements for individual identifying information contained in "Point-in-Time" homelessness counts and homeless management information systems. It provides the exemption is retroactive and includes information collected before the bill's effective date.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-33, Laws of Florida.

Public Records/Law Enforcement Geolocation Information CS/SB 1046 (Hooper)

The bill provides an exemption from public records requirements for law enforcement geolocation information held by a law enforcement agency. It provides for the release of the information under specified circumstances. "Law enforcement geolocation information" is defined in the bill as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of the law enforcement officer or a law enforcement vehicle. The exemption does not apply to uniform traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-107, Laws of Florida

Public Records/Substance Abuse Impaired Persons SB 7008 (Children, Families, and Elder Affairs Committee)

The bill saves from repeal a current exemption from the public records requirements for petitions for involuntary assessment and stabilization, court orders, and related records filed with or by a court under the Marchman Act.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-44, Laws of Florida.

Public Records/Alleged Victim or Victim of Sexual Harassment SB 7024 (Governmental Oversight and Accountability)

The bill revises a current exemption from the public records requirements for personal identifying information of the alleged victim in an allegation of sexual harassment to also include a victim of sexual harassment if such information identifies that person as an alleged victim or as a victim of sexual harassment. It provides that confidentiality may be waived in writing by the alleged victim or victims.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-172, Laws of Florida

Public Records/Nonjudicial Arrest Record of a Minor HB 197 (Smith, D.)

The bill provides an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program which is sealed or expunged under section 943.0582, Florida Statutes (see CS/HB 195, *infra*). The exemption applies to records held before, on, or after July 1, 2022.

Effective date: The date CS/HB 195 takes effect (see Public Health, Safety & Courts section, *infra*).

Approved by Governor: Ch. 2022-112, Laws of Florida

Public Records CS/CS/SB 1304 (Gruters)

The bill creates a public records exemption for court records in a trust law case where a family trust company, licensed family trust company, or foreign licensed family trust company is a party. The court records of the case are not available for public inspection, but may be accessed by the settlor, a fiduciary or a beneficiary, and his or her attorney. The clerk of court is not required to independently determine whether the exemption applies; a party to the case must specifically notify the clerk of court the exemption applies. In addition, the court may allow access to a person who has a specific interest in the trust and who can show there is a compelling need for access. However, when providing access to the court records, the court may limit the person's access to limited portions of the court file as necessary to protect the person's interest. The court may also limit the person from further distributing the information regarding the trust.

Effective date: July 1, 2022. Approved by Governor:

Public Records/Motor Vehicle Crashes/Traffic Citations CS/CS/SB 1614 (Harrell)

The bill revises the agencies to which a public records exemption for certain motor vehicle crash reports applies to include agencies as defined in section 119.011, Florida Statutes. It designates certain governmental and third parties to whom a crash report may be made immediately available. The crash report may be made available to specified media provided that it does not contain the following information for the parties involved in the crash: home or employment street address; driver license or identification card number; date of birth; and home and employment telephone

numbers. It provides that crash reports may be made available 60 days after the report is filed to any person or entity eligible to access crash reports under the bill or in accordance with any of the permissible uses listed in the Driver's Privacy Protection Act (DPPA) of 1994. It provides a public records exemption for crash report data in a computerized database and provides an exemption from public records requirements for driver information contained in a uniform traffic citation. The bill authorizes an agency to release driver information in a uniform traffic citation in accordance with the exemptions in the DPPA. It provides additional penalties for persons who knowingly disclose or use personal information revealed in a crash report for a purpose not permitted under 18 U.S.C. 2721(b).

Effective date: March 1, 2023. Approved by Governor:

Public Records and Meetings/Cybersecurity CS/HB 7057 (State Administration & Technology Appropriations Subcommittee)

The bill provides an exemption from public records requirements for certain cybersecurity insurance information, critical infrastructure information, cybersecurity incident information, and certain cybersecurity-related information held by an agency. Specifically, the bill exempts from disclosure: coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of IT systems, operational technology systems, or data of an agency; information relating to critical infrastructure; and network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents. addition, the bill provides an exemption from public meetings requirements for portions of a meeting that would reveal certain cybersecurity-related information held by an agency. While exempt portions of the meeting must be recorded and transcribed, the bill provides an exemption from public records requirements for such recordings and transcripts. It provides for disclosure of confidential and exempt information to a law enforcement agency, the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the Department of Management Services, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, such information may be disclosed by an agency in furtherance of its official duties to another agency or governmental entity in the furtherance of its duties. It authorizes agencies to report information about cybersecurity incidents in the aggregate. The bill applies retroactively to information held by an agency before, on, or after July 1, 2022.

Effective date: Upon the date CS/HB 7055 takes effect (see General Government section, *supra*). Approved by Governor:

Public Safety, Health, & Courts

Law Enforcement CS/HB 3 (Leek)

The bill provides tools to assist with the recruitment and retention of law enforcement officers, including financial incentives, additional training, and expanded educational opportunities for law enforcement officers. It creates a recruitment bonus program within the Florida Department of Economic Opportunity to provide one-time bonus payments of up to \$5,000 to newly employed

law enforcement officers (who have never been employed as a law enforcement officer in the state). The officer must maintain continuous full-time employment for at least two years, or the bonus must be reimbursed to the state. The bill establishes a scholarship program, administered by the Department of Education, to cover tuition, fees and up to \$1,000 of education expenses for trainees enrolled in a law enforcement officer basic recruit training program. Scholarships are awarded on a first-come, first served basis and recruits whose training costs are covered by another sponsoring agency are not eligible. Out-of-state fees are not covered by the scholarship. The bill creates a program for the Department of Education, in coordination with the Florida Department of Law Enforcement, to pay for up to \$1,000 of equivalency training costs for certified law enforcement officers who relocate to Florida or for members of the special operations forces who become law enforcement officers. The new financial incentive programs in the bill are subject to annual legislative appropriation. The bill exempts veterans and applicants with associate degrees or higher from taking the basic skills test as a prerequisite to entering a basic recruit training program and requires that law enforcement officers receive additional training in health and wellness. It allows law enforcement officers to receive postsecondary credit at Florida public postsecondary educational institutions for training and experience acquired during service. The bill provides additional financial benefits for law enforcement officers who adopt a child from within the state child welfare system and makes dependent children of law enforcement officers eligible to receive a Family Empowerment Scholarship to attend a private school. It encourages school districts to establish public safety telecommunication training programs and law enforcement explorer programs in public schools. Finally, it increases the base salary for county sheriffs by \$5,000. The bill also added a new subsection (12) to s. 30.49, Florida Statutes, which authorizes a sheriff to transfer funds between the fund and functional categories and object and subobject code levels after his or her budget has been approved by the county commission. The provision is a direct response to the unanimous decision of the Florida Supreme Court in Alachua County v. Watson, Case No. SC 19-2016 (January 27, 2022)(holding that sheriffs could not transfer funds between the object codes listed in s. 30.49(2)(c), F.S., without a budget amendment approved by the board of county commissioners).

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-23, Laws of Florida.

Firefighter Inquiries and Investigations HB 31 (Busatta Cabrera)

The bill extends certain provisions of the Firefighters' Bill of Rights to questioning conducted during an informal inquiry into alleged misconduct of a firefighter. Similar to interrogations during formal inquiries currently subject to the Firefighter's Bill of Rights, the bill requires an informal inquiry of a firefighter to be of reasonable duration with permitted periods for rest and personal necessities, and not subject the firefighter to offensive language or offer any incentive as an inducement to answer any questions. Specifically, during an informal inquiry or an interrogation, a firefighter may not be threatened with transfer, suspension, dismissal, or any other disciplinary action. The bill authorizes an employee organization to represent any member of a bargaining unit desiring such representation in an informal inquiry. It provides that a firefighter under informal inquiry may not be disciplined or discriminated against, or threatened with such action, solely for exercising rights under the Firefighters' Bill of Rights. The bill clarifies and distinguishes the terms "formal investigation" and "informal inquiry."

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-110, Laws of Florida

Emergency Preparedness and Response Fund CS/SB 96 (Burgess)

The bill amends provisions relating to state expenditures made in response to a disaster. It requires funding for the resources to respond to a disaster to first come from funds specifically appropriated to state and local agencies for disaster relief or response. If those funds are insufficient, the bill authorizes the Governor to make funds available by transferring and expending monies in the Emergency Preparedness and Response Fund.

Effective date: February 17, 2022.

Approved by Governor: Ch. 2022-001, Laws of Florida.

Emergency Preparedness and Response Fund SB 98 (Burgess)

The bill creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor and provides for the deposit and use of funds. The fund terminates four years after the bill becomes law unless it is recreated by the legislature.

Effective date: February 17, 2022.

Approved by Governor: Ch. 2022-002, Laws of Florida.

Juvenile Diversion Program Expunction CS/HB 195 (Smith, D.)

The bill requires the Florida Department of Law Enforcement to expunge a juvenile's nonjudicial arrest record following the juvenile's completion of a diversion program for any offense that is not a forcible felony or any felony involving the sale, manufacture, purchase, transport, possession, or use of a firearm or weapon (current law allows expunction for only misdemeanor offenses). In addition, the bill provides that a juvenile who successfully completes a diversion program and who is granted an expunction may lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-111, Laws of Florida

COVID-19-related Claims Against Healthcare Providers SB 7014 (Judiciary Committee)

The bill extends heightened liability protections for certain healthcare providers established by the legislature in 2021 (see s. 768.381, Florida Statutes), to COVID-19-related claims accruing before June 1, 2023.

Effective date: February 24, 2022.

Approved by Governor: Ch. 2022-10, Laws of Florida.

Regulation of Smoking by Counties and Municipalities CS/HB 105 (Fine)

The bill authorizes municipalities and counties to further restrict smoking within the boundaries of any public beaches and parks that they own, except that they may not further restrict the smoking of unfiltered cigars. The bill authorizes a municipality to restrict smoking within the boundaries of public beaches and parks that are within the jurisdiction but owned by the county, unless such restriction conflicts with a county ordinance.

Effective date: July 1, 2022. Approved by Governor:

Lodging Standards CS/SB 898 (Stewart)

The bill, designated as "Miya's Law," (after Miya Marcano, who was murdered in September 2021, in Orlando, Florida, by a maintenance worker at her apartment complex that used his master key to enter the apartment) requires a landlord of a public lodging establishment classified as a nontransient or transient apartment to require that each employee of the establishment undergo a background screening as a condition of employment. The screening must be performed by a consumer reporting agency under the federal Fair Credit Reporting Act and must include a search of nationwide criminal records, sexual predator, and sexual offender registries. The bill provides a landlord may disqualify a person from employment if the person has committed:

- Certain criminal offenses involving a disregard for the safety of others that would be a felony or first-degree misdemeanor if committed in Florida.
- Certain violent criminal offenses, including murder, sexual battery, robbery, carjacking, home-invasion robbery, and stalking.

Additionally, the bill requires each public lodging establishment licensed as a nontransient or transient apartment to:

- Require that each employee of the licensee undergo the required background screening;
- Maintain a log accounting for the issuance and return of all keys for each dwelling unit;
- Establish policies and procedures for the issuance and return of dwelling unit keys; and
- Upon request during DBPR's annual inspection, provide proof of compliance with such requirements.

The bill further prohibits an operator of a public lodging establishment from offering an hourly rate for an accommodation, except for late checkout fees.

Effective date: July 1, 2022, except as provided otherwise. Approved by Governor:

School Safety

CS/CS/CS/HB 1421 (Hawkins)

The bill revises provisions relating to the Marjory Stoneman Douglas High School Public Safety Commission, affiliated programs, and requirements. Several provisions address local law enforcement: the State Board of Education must adopt rules regarding school emergency drills, including timing, frequency, participation, training, and notification; law enforcement responsible

for responding to schools in the event of an emergency must be physically present and participate in active assailant drills; school districts must notify law enforcement officers at least 24 hours before conducting an active assailant emergency drill at which the officers are expected to attend; safe-school officers that are sworn law enforcement officers must complete mental health crisis intervention training and safe-school officers that are not sworn law enforcement must receive training on incident response and de-escalation; individuals must satisfy background screening requirements and be approved by the sheriff before participating in any training pursuant to a school guardian program; each school board and charter school governing board must adopt, in coordination with local law enforcement agencies and local governments, a family reunification plan to reunite students and employees with their families in the event the school is closed or unexpectedly evacuated due to a disaster; and school district and local mobile response teams must use the same suicide screening tool approved by the Florida Department of Education.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-174, Laws of Florida

Officer and Firefighter Physical Examination Requirements and Records CS/HB 453 (Byrd)

The bill requires employing agencies to maintain records of a law enforcement, correctional, or correctional probation officer's pre-employment physical examination for at least 5 years after the officer separates from the agency. The record retention requirement also applies to firefighters who may have taken a pre-employment physical examination upon employment with the agency. If a firefighter did not undergo a pre-employment physical exam, the bill authorizes a firefighter to support a claim for benefits using the medical exam that was required for the firefighter to enroll in training and become certified as a firefighter. The firefighter may be eligible for the disability presumption if that medical exam failed to reveal any evidence of tuberculosis, heart disease, or hypertension. If the agency fails to maintain the record, the officer or firefighter is entitled to the presumption that his or her disability due to tuberculosis, heart disease, or hypertension is compensable under the workers' compensation law.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-114, Laws of Florida

Victims of Crimes CS/SB 1012 (Burgess)

The bill requires law enforcement personnel to ensure that crime victims are given certain information about specified rights. Specifically, victims must be informed of their right to employ private counsel. In addition, the bill encourages the Florida Bar to develop a registry of attorneys willing to serve on a pro bono basis as advocates for crime victims. The bill also clarifies that victims who are not incarcerated may, upon request, be informed, be present, and be heard at all stages of criminal and juvenile proceedings.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-106, Laws of Florida

Two-way Radio Communication Enhancement Systems CS/SB 1190 (Boyd)

The bill revises the Florida Fire Prevention Code with respect to minimum signal strength requirements in buildings. It provides that two-way radio communication enhancement systems or equivalent systems may be used to comply with a local fire authority's minimum radio signal strength requirements, but may not be required by local fire authorities in apartment buildings that are 75 feet in height or less that are constructed using wood framing, provided the building has less than 150 dwelling units and all dwelling units discharge to the exterior or to a corridor leading directly to an exit.

Effective date: July 1, 2022. Approved by Governor:

County and Municipal Detention Facilities CS/SB 1236 (Jones)

The bill defines the terms "serious violation" and "notable violation" and revises the definitions of "county detention facility" and "municipal detention facility." The bill creates the Florida Model Jail Standards (FMJS) Working Group to develop and maintain model standards for county and municipal detention facilities. The FMJS Working Group is comprised of seven members appointed by the Florida Sheriffs Association (FSA) and the Florida Association of Counties. The FMJS Working Group is to be comprised of:

- Three currently elected sheriffs appointed by the Florida Sheriffs Association;
- A Florida-licensed physician with at least two years' experience in correctional health care appointed by the Florida Sheriffs Association;
- A currently elected county commissioner appointed by the Florida Association of Counties;
- An experienced jail administrator of a Florida county jail operated by a county, appointed by the Florida Association of Counties; and
- A Florida-licensed psychiatrist with at least two years' experience in correctional psychiatry, appointed by the Florida Association of Counties.

The bill requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt, at a minimum, the approved FMJS, which addresses the construction, equipping, maintenance, and operation of county and municipal detention facilities, as well as the confinement and classification of prisoners. Under the bill's provisions, each county or municipal detention facility must be inspected at least twice annually – one announced inspection to evaluate a facility's compliance with all the FMJS, and one unannounced inspection to review any serious violations. The two inspections must be at least 120 days apart.

The bill prohibits a county or municipal detention facility from refusing to be inspected or refusing access to its facility. If the officer in charge of the facility so refuses, then his or her salary must be withheld and deposited in the facility's inmate welfare fund for each day the person refuses such inspection or access. The penalty applies regardless of whether the person is elected, appointed, or an employee of a county, city, or other political division of the state.

The bill provides if, upon inspection, a facility is noncompliant with the FMJS, it has 30 days to cure the noncompliance if it is not a serious violation. If the violation is serious, the facility has 24

hours to cure the noncompliance. For notable, or non-serious violations, the facility will be reinspected within 10 days after the 30-day correction period. If the facility is still noncompliant, the facility will have 15 days to cure the noncompliance and a second re-inspection will be conducted within 48 hours thereafter. For serious violations, the facility will be re-inspected within 48 hours after the serious violation was first observed. If a facility continues to be noncompliant on a notable violation after the first and second re-inspection or on a serious violation after the re-inspection, the facility will be subject to penalties.

The bill assigns the following penalties for noncompliance with the FMJS:

- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay the following amount into the facility's inmate welfare fund for each day that the facility is not in compliance with the FMJS:
 - o \$500 per day of noncompliance for the 31st day through the 60th day;
 - o \$1,000 per day of noncompliance for the 61st day through the 90th day; and
 - o \$2,000 per day of noncompliance for the 91st day and all remaining days.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay \$2,000 per day that the FMJS Working Group determines that the facility is noncompliant.

In addition to the above-listed penalties, if a second re-inspection for a notable violation or a reinspection for a serious violation reveals that the detention facility continues to be noncompliant, the detention facility must cease operation within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day period commences upon:

- The expiration of the appeal process, as provided in the FMJS;
- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

If the detention facility consists of separate detention campuses, only the campus determined to be noncompliant must cease operations. The receiving facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-108, Laws of Florida

Care for Retired Law Enforcement Dogs CS/SB 226 (Powell)

The bill creates the Care for Retired Police Dogs Program within the Florida Department of Law Enforcement and requires the department to contract with a nonprofit corporation to administer and manage the program. It specifies requirements for the disbursement of funds for the veterinary care of retired police dogs.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-188, Laws of Florida

Drug-related Overdoses CS/SB 544 (Boyd)

The bill revises provisions relating to the prescribing, ordering, and dispensing emergency opioid antagonists to certain persons by authorized healthcare practitioners. It authorizes pharmacists to order and dispense emergency opioid antagonists. The bill provides immunity from civil liability as a result of administering an emergency opioid antagonist to: emergency responders; crime laboratory personnel; and personnel of a law enforcement agency, including correctional probation officers and child protective investigators who, while acting within the scope of their employment, come into contact with a controlled substance or persons at risk of experiencing an opioid overdose. The bill requires a hospital emergency department or urgent care center that treats and releases a person in response to an actual or suspected overdose of a controlled substance to report the incident to the Department of Health under specified circumstances. It authorizes a public school to purchase a supply of the opioid antagonist naloxone for use in the event a student has an opioid overdose, and provides immunity from civil liability to a school district employee who administers an approved emergency opioid antagonist to a student in compliance with law.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-28, Laws of Florida.

Telecommunicator Cardiopulmonary Resuscitation HB 593 (McClure)

The bill requires 911 public safety telecommunicators to complete biennial telecommunicator cardiopulmonary resuscitation (CPR) training to have their certification renewed. It authorizes public safety agencies to enter into agreements with other public safety agencies to provide telephonic assistance in administering CPR. An employee of a public safety agency receiving or dispatching telephone calls for emergency medical conditions who answers such calls must directly provide telephonic assistance in administering CPR, when appropriate, or transfer such calls to the applicable agency with which the transferring agency has an agreement.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-51, Laws of Florida.

Workers' Compensation Benefits for Posttraumatic Stress Disorder CS/HB 689 (Giallombardo)

The bill amends the timeframe in which a first responder must notify the employer of an injury and the timeframe in which a petition for workers' compensation benefits must be filed. It specifies that the time for notice of an injury or death in a compensable post-traumatic stress disorder claim must be properly noticed within 90 days after the qualifying event or the diagnosis of the disorder, rather than the manifestation of the disorder, whichever is later. It extends the claim filing deadline to either one year after the qualifying event or diagnosis of the disorder, whichever is later. The bill expands workers' compensation coverage for post-traumatic stress disorder (PTSD) for first responders to also include correctional officers. The portion of the bill that impacts local governments will be effective October 1, 2022.

Effective date: July 1, 2022, except as specified.

Approved by Governor: Ch. 2022-148, Laws of Florida

Substance Abuse Service Providers SB 704 (Harrell)

The bill makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs and providers, including recovery residences and recovery residence administrators. Specifically, the bill requires the Department of Children and Families to include approval for contingency management programs in the triennial plan's regional funding priorities component. The bill requires applicants for substance abuse service provider licensure to include the names and locations of recovery residences the applicant plans to refer patients to or accept patients from in their licensure application. By July 1, 2022, the bill requires licensed substance abuse service providers to record the names and locations of recovery residences to which the applicant has referred patients, or from which the applicant has accepted patients, in the Provider Licensure and Designations System (PLADS) maintained by the Department of Children and Families (the DCF). Providers must update PLADS with the names and locations of any new recovery residences to which patients have been referred, or from which patients have been received, within 30 business days of referring or receiving patients. Beginning July 1, 2022, the bill also subjects providers to a \$1,000 administrative fine for non-compliance. The bill prohibits certified recovery residence administrators from managing more than 50 patients at any one time without written justification and approval from a certification credentialing entity as how the administrator will effectively and appropriately respond to the needs of the residents, maintain residence standards, and meet the residence certification requirements; however, the bill prohibits an certified recovery residence administrator from managing more than 100 patients at any one time. The bill also removes a cap on the number of recovery residences a certified recovery residence administrator can manage at any given time. Finally, the bill requires substance abuse service providers to return an individual's personal effects upon the individual's discharge from treatment.

Effective Date: April 6, 2022.

Approved by Governor: Ch. 2022-31, Laws of Florida.

Education for Student Inmates CS/SB 722 (Perry)

The bill authorizes the Department of Corrections and counties to contract with Florida College System institutions to provide education services for student inmates. Current law allows counties and the department to contract with school boards, the Florida Virtual School, and charter schools for such purposes.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-143, Laws of Florida

Emergency Medical Care and Treatment to Minors Without Parental Consent HB 817 (Massullo, Jr.)

The bill removes a requirement in current law that emergency medical care or treatment to a minor without parental consent be administered by a physician in a hospital or college health service.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-53, Laws of Florida.

Protective Injunctions CS/HB 905 (Fetterhoff)

The bill requires the clerk of court to electronically submit, within 24 hours after issuance by a court, a copy of a protective injunction and other required documents to a sheriff or law enforcement agency of the county where the respondent resides or may be found. The bill removes various references to the transmission of facsimile copies of protective injunctions and authorizes a sheriff to electronically transmit a copy of a protective injunction to a law enforcement officer for service of process.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-173, Laws of Florida

Mental Health and Substance Abuse CS/CS/SB 1262 (Burgess)

The bill amends provisions relating to voluntary and involuntary examinations under the Baker and Marchman Acts. It prohibits restrictions on visitors, phone calls, and written correspondence for Baker Act patients unless qualified medical professionals determine such communication would be harmful to the person or others in a manner directly related to the person's clinical well-being, the clinical well-being of others, or the general safety of staff. The bill requires law enforcement officers to search databases of the Florida Department of Law Enforcement and Department of Highway Safety and Motor Vehicles for emergency contact information of Baker and Marchman Act patients being transported to a receiving facility. The bill makes it a first degree misdemeanor for a person to knowingly and willfully: furnish false information for the purpose of obtaining involuntary admission; cause or conspire to cause an involuntary procedure under false pretenses; or cause or conspire to cause, without lawful justification, a person to be denied their rights under the Baker Act. It requires receiving facilities to offer voluntary Baker and Marchman Act patients the option to authorize the release of clinical information to individuals known to the patient within 24 hours of admission.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-36, Laws of Florida.

Human Trafficking HB 615 (Overdorf)

The bill requires the Statewide Council on Human Trafficking to assess the frequency and extent to which social media platforms are used to assist, facilitate, or support human trafficking within the state; establish a process to detect such use on a consistent basis; and make recommendations on how to stop, reduce, or prevent social media platforms from being used for human trafficking

purposes. In addition, the bill requires the DSO – i.e., the Florida Alliance to End Human Trafficking (a direct support organization established by the Department of Legal Affairs) – to develop training specifically for firesafety inspectors relating to recognizing and reporting human trafficking, and provides for the training to be eligible for the continuing education credits required under s. 633.216(4), Florida Statutes. The bill further requires foster parents and all agency staff to complete preservice and in-service training related to recognizing, preventing, and reporting human trafficking. The preservice training must include the following topics, at a minimum:

- Basic information on human trafficking, such as an understanding of relevant terminology and the differences between sex trafficking and labor trafficking;
- Factors and knowledge on how to identify children at risk of human trafficking; and
- Steps that may be taken to prevent at-risk youths from becoming victims of human trafficking.

The bill requires foster parents, before licensure renewal, and agency staff, during each full year of employment, to complete in-service training related to human trafficking.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-168, Laws of Florida

Fire Investigators CS/SB 838 (Wright)

The bill amends the definition of "firefighter" to include Florida-certified fire investigators, making fire investigators eligible for the special benefit package. The special benefit package provides that firefighters who are diagnosed with certain types of cancer are eligible for a \$25,000 payment and employer-sponsored health insurance, including repayment for any deductible, copayment, or co-insurance amount the firefighter pays for the treatment of cancer. The firefighter must meet certain requirements. Twenty-one types of cancer are covered, and employment-sponsored health benefits must be made available for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently reemployed as a firefighter. If a firefighter becomes disabled or dies due to cancer, the employer must consider the cancer diagnosis as an injury or illness incurred in the line of duty. This makes the firefighter eligible for line-of-duty disability retirement benefits and makes surviving family members eligible for line-of-duty death benefits.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-131, Laws of Florida

Funding for Sheriffs

CS/CS/HB 963 (Hunschofsky)

The bill allows a sheriff under contract with the Florida Department of Children and Families (FDCF) to conduct child protective investigations, to carry forward unused state funding from one fiscal year to the next subject to an eight percent cap of the unexpended total contract amount or grant award agreement. Any unused funding in excess of the eight percent cap must be returned FDCF. In addition, funds carried forward may not be used: 1) to increase a recurring obligation; or 2) for a program or service not authorized by the existing contract with FDCF; and 3) must be reported to the department separately from other funding. The bill further specifies that all

unexpended funding must be returned to FDCF if a sheriff's office no longer provides child protective investigations.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-58, Laws of Florida.

Immigration Enforcement CS/SB 1808 (Bean)

The bill amends three areas of chapter 908, Florida Statutes, relating to federal immigration enforcement. Specifically, the bill expands the definition of "sanctuary policy" to include any law, policy, practice, procedure, or custom of any state or local governmental entity which prohibits a law enforcement agency from providing to any state entity information on the immigration status of a person in the custody of the law enforcement agency. The bill also mandates each law enforcement agency that operates a county detention facility to enter into a "287(g) Agreement" with United States Immigration and Customs Enforcement (ICE) by January 1, 2023; however, the bill does not specify which type of agreement the law enforcement agency must choose. In addition, the bill prohibits state and local governmental entities from contracting with common carriers or contracted carriers that willfully transport a person into the state knowing the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from the state or the United States. The bill further specifies that contracts, including a grant agreement or economic incentive program payment agreement, must include certain provisions requiring the common carrier or contracted carrier to attest that it is not, and will not, transport an unauthorized alien into the state. The bill amends existing criminal justice data collection statutes. Particularly, state entities must collect and report immigration status data to the Florida Department of Law Enforcement each month. Clerks of courts must collect and report the immigration status of each defendant in a criminal case. The administrator of a county detention facility must collect and report information on the immigration status of each inmate, and the Department of Corrections must collect and report the immigration status of each inmate and each person the department supervises on probation or community control.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022- , Laws of Florida

Mental Health and Substance Abuse CS/SB 1844 (Bean)

The bill amends the Baker Act to permit a minor's voluntary admission to a receiving facility after a clinical review of the minor's assent has been conducted. The bill also requires that a clinical review be held to verify the voluntariness of a minor's assent before a minor patient's status is transferred from involuntary to voluntary status under the Baker Act. Finally, the bill requires law enforcement officers transporting an individual to a receiving facility for an involuntary examination under the Baker and Marchman Acts to restrain the individual in the least restrictive manner available and appropriate under the circumstances.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-41, Laws of Florida.

Judicial Branch

CS/HB 7027 (Judiciary Committee & Gregory)

The bill creates a sixth district court of appeal with its headquarters in Polk County, Florida and relocates the headquarters of the Second DCA to Pinellas County, Florida. The bill realigns the judicial circuits within the existing First, Second, and Fifth DCAs and creates a sixth district composed of the Ninth, Tenth, and Thirteenth judicial circuits. The Third and Fourth DCAs remain unchanged. Under the bill, the First DCA will decrease from 15 appellate judges to 13; the Second DCA will decrease from 16 appellate judges to 15; the Fifth DCA will increase from 11 appellate judges to 12; and the Sixth DCA will have 9 appellate judges – ultimately adding a total of seven new appellate judgeships in accordance with the Supreme Court's certification. The creation of the Sixth DCA and the realignment of existing districts is effective January 1, 2023. The bill makes conforming changes to account for the creation of the new appellate district and realigns the geographic regions of the appellate public defender and the Criminal Conflict and Civil Regional Counsel. The bill also requires the Governor to recommission each judge whose district was realigned. To ensure compliance with residency requirements for members of each judicial nominating commission, the bill terminates the terms of the judicial nominating commissions' members on the First, Second, and Fifth DCAs, effective upon the bill becoming a law. The bill further directs the Governor to appoint members to those three commissions and to the judicial nominating commission for the new DCA in a specified manner. Lastly, the bill adds an additional county court judgeship in Lake County, Florida, as recommended in the Supreme Court's certification.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-163, Laws of Florida

Time Limitations for Preadjudicatory Juvenile Detention Care CS/HB 7029 (Criminal Justice & Public Safety Subcommittee)

The bill extends the time limit for which a juvenile may be detained in a supervised release program from 21 days to 60 days and provides for electronic monitoring of juvenile offenders. Additionally, a hearing to show good cause to extend the detention period must be conducted every 21 days (current law specifies nine days) for both supervised release and secure detention of a juvenile. The bill may have an indeterminate impact on the total number of detention days served. Moreover, the bill may also have implications for county cost sharing—as it stands, counties (excluding those which are fiscally constrained or provide their own detention infrastructure) are required to split the costs of detention with the Department of Juvenile Justice.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-181, Laws of Florida

Opioid Settlement Clearing Trust Fund

HB 5013 (Appropriations Committee and Trumbull)

The bill creates the Opioid Settlement Clearing Trust Fund in the Department of Financial Services (DFS). The bill provides that funds credited to the trust fund shall consist of payments received by the state from settlements reached with distributors in the *Mallinckrodt* case and any other similar settlement from opioid-related litigation or bankruptcy. Moneys received from such settlements and deposited into the trust fund are exempt from the service charge in s. 215.20, Florida Statutes.

The bill subdivides the trust fund into two sub funds – a regional subfund and a state subfund. The bill authorizes certain amounts to be deposited each year with any remainder deposited into the state subfund. The bill further authorizes DFS to draw warrants for which the Department of Legal Affairs notifies the Chief Financial Officer (CFO) to draw warrants and withdraw such amounts from the regional fund to pay counties in accordance with any allocation agreement or settlement if the county:

- Has a population of at least 300,000 based on specified Census Bureau data;
- Has an opioid task force which the county is a member or operates in connection with its municipalities or others on a local or regional basis. The bill defines the term "task force";
- As of December 31, 2021, has an abatement plan that has been adopted or is being used to respond to the opioid epidemic;
- As of December 31, 2021, provides or contracts with others to provide substance abuse prevention, recovery, and treatment services to its citizens; and
- Enters or has entered an interlocal agreement with a majority of its municipalities located within the county's boundaries. The term "majority" means more than 50 percent of the population in municipalities within the county's boundaries. Individuals residing in the unincorporated areas may not be counted in calculating the majority.

Lastly, the bill requires that any funds disbursed or transferred from the trust fund must be used by the state, its agencies, contractors, its subdivisions, and their contractors to abate the opioid epidemic.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-161, Laws of Florida

Transportation

Airport Funding HB 631 (Grall)

The bill permits the Florida Department of Transportation to fund up to 80 percent (through the Aviation Grant Program in the State Transportation Trust Fund) of eligible project costs for airports classified as commercial service or general aviation with fewer than 100,000 annual passenger boardings.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-52, Laws of Florida

Recreational Off-highway Vehicles SB 474 (Perry)

The bill revises the current law definition of "ROV" to increase the weight limit of vehicles so defined. As revised, "ROV" means any motorized recreational off-highway vehicle 80 inches or less in width which has a dry weight of 3,500 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-93, Laws of Florida

Florida Seaport Transportation and Economic Development Council SB 1038 (Perry)

The bill revises the membership of the Florida Seaport Transportation and Economic Development Council to include a representative of Putnam County. It authorizes Putnam County to apply for a grant for a port feasibility study through the Council until July 2024. If the Council approves the feasibility study, the bill requires the Department of Transportation to include the study in its budget request. If the Council does not approve the study, the membership of Putnam County on the Council will terminate.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022- , Laws of Florida

Vessel Anchoring CS/CS/SB 1432 (Rodriguez, A.)

The bill provides that approved and permitted moorings and mooring fields in Monroe County have a 10-year limit on general tenancies and that a sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring field, or limit the tenancy of a vessel, because it is an established domicile or a primary residence. It specifies that Monroe County is designated as an anchoring limitation area. Vessels anchored on waters of the state within the county and within 10 nautical miles of a public mooring field or designated anchoring area must, at least once every 90 days: pull anchor; move under their own power; and re-anchor a certain distance away or in a different anchoring area.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-78, Laws of Florida

Motor Vehicle and Vessel Law Enforcement CS/CS/CS/HB 399 (Rodriguez, Ant.)

The bill amends the crimes under s. 316.191(2), Florida Statutes, to add additional types of vehicles and additional prohibited conduct including a street takeover, stunt driving, and operating a vehicle to film or record prohibited activities or to carry fuel for other vehicles involved in prohibited activities. The bill defines the terms "burnout," "doughnut," "drifting," "motor vehicle," "street takeover," "stunt driving," and "wheelie." The bill also amends the current definition of "spectator" to include a person who is knowingly present at and views a street takeover and provides that evidence of filming or recording such an event or posting the event on social media are factors to be considered in determining whether a person qualifies as a spectator. A person commits a noncriminal traffic infraction if he or she is found to be a spectator at a race or street takeover. The bill amends the first-degree misdemeanor crimes under s. 316.191(2), Florida Statutes, to add drag race, street takeover, and stunt driving to each type of prohibited conduct. The bill further adds street takeovers and stunt driving to the list of violations which require an offender to pay a \$65 penalty. If an officer has probable cause to believe that a person has committed a violation relating to a street takeover or stunt driving, the officer may arrest the person

without a warrant. The bill also provides that a person commits a first degree misdemeanor under s. 316.2397, Florida Statutes, by operating a vehicle displaying red, red and white, or blue lights if in displaying such lights he or she effects or attempts to effect a stop of another vehicle; and provides that a court or jury may consider any relevant evidence, including, but not limited to whether a defendant used certain prohibited lights, in determining if a defendant committed an offense of false personation under s. 843.08, Florida Statutes.

Effective date: October 1, 2022.

Approved by Governor: Ch. 2022-180, Laws of Florida

Department of Highway Safety & Motor Vehicles SB 914 (Harrell)

The bill is the Florida Department of Highway Safety and Motor Vehicles' (DHSMV) 2022 legislative package. The bill revises the dates associated with DHSMV's texting and driving annual report to require that information be provided to the DHSMV annually by April 1, and the report must be submitted annually by July 1. The bill requires a motor vehicle operator to provide proof of insurance upon the request of a law enforcement officer. Specifically, any operator who is the owner or registrant of the vehicle being operated and who fails to provide proof of insurance commits a nonmoving traffic infraction and will be required to furnish proof of insurance that was in effect at the time of the violation at or before a scheduled court appearance or have their driver license suspended; and any operator who is not the owner or registrant of the vehicle being operated and fails to provide proof of insurance commits a nonmoving traffic infraction. The bill expands the existing Private Rebuilt Vehicle Inspection Program in Miami-Dade County to Bay, Broward, Duval, Escambia, Hillsborough, Leon, Manatee, Marion, Orange, Palm Beach, and Volusia counties beginning October 1, 2022. The bill provides a fee exemption for a surviving spouse transferring a motor vehicle title solely into his or her name when only the deceased spouse is named on the title. In addition, the bill provides charter buses are apportionable vehicles subject to the requirements of the International Registration Plan. The bill further prohibits individuals who have registration stops associated with toll violations from either renewing their registrations or replacing their license plates until satisfying the toll violation. Mobile home and recreational vehicle dealers, manufacturers, distributors, and importers must deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety or cash bonds, or irrevocable letters of credit within a specified timeframe. The bill revises minimum insurance requirements for commercial vehicles that carry passengers to comply with federal requirements. Finally, beginning November 1, 2023, the bill requires each distinguishing number assigned to an original, renewal, or replacement driver license and identification card to have a minimum of four randomly generated digits.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-175, Laws of Florida

Motor Vehicle Insurance CS/SB 266 (Diaz)

The bill provides that if an employing agency authorizes a law enforcement officer to travel to his or her place of residence in an official law enforcement vehicle, the agency shall maintain current and valid motor vehicle insurance, including bodily injury, death, and property damage liability

coverage that covers the period in which the officer travels to and from work or to and from any other employing agency assignment in an official law enforcement vehicle. The insurance is not required to provide coverage if: the officer makes a distinct deviation for a nonessential personal errand (unless a collective bargaining agreement provides otherwise); or the officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The bill specifies that any action against an employing agency for damages arising from tort under this provision is subject to the limitations provided in section 768.28(5), Florida Statutes, and that the requirements may be met by any method specified in section 768.28(16).

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-91, Laws of Florida

Fish & Wildlife Conservation Commission CS/CS/SB 494 (Hutson)

The bill revises laws administered by the Fish & Wildlife Conservation Commission (FWC) and other law enforcement bodies. Among other things, the bill modifies current law provisions relating to derelict, at-risk, and abandoned vessels. It specifies that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted mooring or other structure. It outlines the circumstances in which law enforcement may destroy or dispose of a vessel, and it adds vessels declared a public nuisance to the definition of "abandoned property." It clarifies that the additional time given for an owner to remove a derelict vessel or to repair the vessel in the event of an accident or event does not apply if the vessel was already derelict at the time of the accident or event. The bill reorganizes current law provisions authorizing FWC to establish a program to provide grants to local governments for removal, storage, destruction, and disposal of derelict vessels and vessels declared a public nuisance. It directs FWC to adopt rules for local governments to submit grant applications and criteria for allocating available funds. The grant award criteria must consider, among other things, the number of derelict vessels within the applicant's jurisdiction, the threat posed by such vessels to health and safety, the environment, navigation, or aesthetics, and the degree of commitment of the local government to maintain waters free of derelict vessels and to seek legal action against those who abandon vessels. The bill specifies that a certificate of title may not be issued for a public nuisance vessel and it adds public nuisance vessels to the definition of abandoned property. In addition, the bill provides that a local government cannot create a public bathing beach or swim area in the marked channel of the Florida Intracoastal Waterway or within 100 feet of the marked channel.

Effective date: July 1, 2022, except as otherwise provided. Approved by Governor: Ch. 2022-142, Laws of Florida

Boating Safety CS/SB 606 (Garcia)

The bill creates the "Boating Safety Act of 2022." The bill amends s. 327.30, Florida Statutes, relating to boating collisions, accidents, and casualties, to provide that a court may order a person convicted of a violation of such section, a rule of the Florida Fish and Wildlife Conservation Commission (FWC), or an FWC order, to pay an additional fine up to \$1,000 per violation. Effective October 1, 2022, the bill adds required components to FWC-approved boating safety

education courses and temporary certificate examinations, and requires the operator of a vessel used in water sport or activity instruction to use an engine cutoff switch when a participant is in the water. Effective January 1, 2023, the bill amends s. 327.54, Florida Statutes, relating to liveries, safety regulations and penalties. Specifically, the bill defines the terms "Advertise," "Conviction," "Livery," and "Seaworthy." The bill requires that liveries obtain a no-cost, annual livery permit from the FWC and implement specified safety requirements. The bill also requires a livery to obtain and carry in full force and effect an insurance policy that insures the livery and the renter against any accident, loss, injury, property damage, or other casualty in the amount of at least \$500,000 per person and \$1.0 million per event. The bill exempts human-powered vessels from the insurance requirement. The bill adds penalties for violations of livery requirements, increases the penalties for certain noncriminal infractions, adds new penalties for an improper transfer of title and failure to update vessel registration information for which the penalty is up to a maximum of \$500. In addition, a person convicted of a noncriminal infraction resulting from a reportable accident, or two specified infractions within a 12-month period must pay a fine of \$500 in addition to completing a mandatory boating safety education course. The bill requires the FWC to maintain a program that tracks compliance with mandatory boating safety education requirements. Finally, the bill requires a physical residential or business address for vessel registration applicants, with a limited exception for live-aboard vessel owners.

Effective date: July 1, 2022, except as otherwise provided. Approved by Governor:

Code and Traffic Enforcement CS/HB 1435 (Leek)

The bill creates s. 316.1891, Florida Statutes, authorizing the sheriff or chief administrative officer of a county or municipality to designate an area as a special event zone in response to a special event that takes place or is reasonably anticipated to take place on a roadway, street, or highway over which the sheriff or chief administrative officer has jurisdiction. If a special event takes place or is reasonably anticipated to take place in multiple jurisdictions, the sheriff or chief administrative officer of each jurisdiction may coordinate to designate a special event zone covering multiple jurisdictions. A "special event" is defined as an unpermitted temporary activity or event organized or promoted via a social media platform which is attended by 50 or more persons and substantially increases or disrupts the normal flow of traffic along a roadway, street, or highway. The bill also defines a "special event zone" as a contiguous area on or along a roadway, street, or highway designated by warning signs, and includes a parking structure, a parking lot, or any other public or private property immediately adjacent to or along the designated area. The bill requires a sheriff or chief administrative officer to enforce a special event zone in a manner that causes the least inconvenience to the public and is consistent with preserving the public health, safety, and welfare. The bill further provides a special event zone must:

Be designated by the posting of a clearly legible warning sign at each point of ingress or
egress stating, "Special Event Zone-All Fines Doubled. Vehicles Subject to Impoundment
for Traffic Infractions and Violations." The warning sign must be large enough to be clearly
visible to occupants of passing vehicular traffic, must have letters at least three inches in
height, and must be posted at least 24 hours prior to enforcement of the special event zone.

• Remain in effect as long as is reasonably necessary to ensure the public health, safety, and welfare, but may not remain in effect after the special event has dissipated.

The bill provides for enhanced penalties for criminal traffic violations (e.g., reckless driving, racing, and driving under influence) and noncriminal traffic infractions (e.g., speeding, careless driving, failure to stop at a traffic signal) that occur within the boundaries of a special event zone. A law enforcement officer may impound the vehicle of any person who commits a criminal traffic violation or noncriminal traffic infraction in a special event zone for up to 72 hours. However, the vehicle must be released immediately upon the payment of any impoundment costs and fees, regardless of whether such payment is made before expiration of the 72-hour period. Unless the criminal charge or noncriminal infraction is dismissed, all costs and fees associated with such impoundment must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle. In addition, a person who commits a noncriminal traffic infraction in a special event zone is required to pay a fine double the amount provided in statute. The bill provides a sheriff or chief administrative officer of a county or municipality with the authority to temporarily authorize a law enforcement officer to enforce occupancy limits on public or private property within a special event zone. The bill authorizes the sheriff or chief administrative officer of a county or municipality that declares a special event zone to recover from a promoter or organizer of a special event all relevant costs or fees associated with designating and enforcing a special event zone. The costs and fees recoverable include, but are not limited to, those incurred for providing supplemental law enforcement personnel, firefighters, emergency medical technicians or paramedics, and sanitation services. Under the bill, a "promoter or organizer" means a person or entity who arranges, organizes, or sponsors a special event.

With respect excessive noise, the bill amends s. 316.3045, Florida Statutes, to update the language and to improve enforcement. Specifically, the bill:

- Expands the types of soundmaking devices in a motor vehicle from which excessive noise is prohibited by including a compact disc player, portable music or video player, cellular telephone, tablet computer, laptop computer, stereo, television, musical instrument, or electronic soundmaking device.
- Provides a person violates the excessive noise prohibition by amplifying a sound that is louder than necessary for convenient hearing by a person inside a vehicle in an area adjoining private residences.
- Removes the noise exemption for vehicles used for business or political purposes, which cures the constitutional defect cited by the Florida Supreme Court in *State v. Catalano*, *et al.*, 104 So. 3d 1069 (Fla. 2012).
- Provides that a local authority may impose more stringent regulations on sound produced by a radio or other mechanical or electronic soundmaking device that emanates from a motor vehicle.

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-149, Laws of Florida

Aircraft (and Drones)

SB 2512 (Appropriations Committee)

The bill requires the Department of Management Services (DMS), by July 1, 2022, and each July 1st thereafter, to publish a list of approved drone manufacturers and related model numbers for the use of drones by governmental agencies. An approved manufacturer must not be located in, substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign country of concern. The bill defines the term "Foreign country of concern" to mean China, Russia, Iran, North Korea, Cuba, Venezuela, Syria or any agency or other entity under the significant control of the foreign country of concern. DMS is authorized to update the list, as needed, based on the emergence of new manufacturers that qualify to be on the list or if new information about an approved manufacturer or model obtained by DMS would require that manufacturer or model to be removed from the approved list. Finally, the bill authorizes an agency that oversees the Florida Forest Service to request a waiver for the acquisition or use of drones not on the approved list.

Effective date: July 1, 2022.

Approved by Governor: **VETOED BY GOVERNOR**

2022 SPECIAL SESSION C

The Florida Legislature met in Special Session (2022 C) on April 18-22, 2022, to consider legislation relating to establishing congressional district maps following his veto of SB 102 passed in the Regular Session. The Governor amended the call on April 18, 2022, to include legislation relating to independent special districts and social media. The Legislature passed three bills (2C, 4C, and 6C) that were signed into law by the Governor on April 22, 2022.

Congressional Redistricting SB 2C (Sen. Rodrigues)

The bill apportions the state into 28 Congressional districts pursuant to state and federal law; defines terms; requires all cases challenging the congressional districts on state constitutional or state law grounds to be brought in Leon County; provides state courts with exclusive jurisdiction to hear challenges brought on state constitutional or state law grounds; provides for severability; and appropriates \$1 million to cover litigation expenses associated with court challenges to the bill.

Effective date: Upon becoming law, except as otherwise provided.

Approved by Governor: Ch. 2022- , Laws of Florida

Independent Special Districts

SB 4C (Sen. Bradley)

The bill dissolves, effective June 1, 2023, all independent special districts established by a special act prior to the ratification of the Florida Constitution on November 5, 1968, if those districts have not been reestablished, re-ratified, or otherwise reconstituted by special act or general law after such date. The dissolved independent special districts may be re-established on or after June 1,

2023, pursuant to the requirements and limitations of Chapter 189 F.S. The following six independent special districts, who operate pursuant to a charter predating the 1968 Florida Constitution and were not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968, are affected by the bill:

- o Bradford County Development Authority (Bradford County)
- o Sunshine Water Control District (Broward County)
- Eastpoint Water and Sewer District (Franklin County)
- o Hamilton County Development Authority (Hamilton County)
- o Reedy Creek Improvement District (Disney) (Orange and Osceola Counties)
- Marion County Law Library (Marion County)

Effective date: July 1, 2022.

Approved by Governor: Ch. 2022-____, Laws of Florida

Social Media Platforms SB 6C (Sen. Bradley)

The bill amends §501.2041(1)(g), F.S., to remove the theme park exclusion from the definition of "social media platform" enacted in SB 7072 in the 2021 Regular Session. The bill was challenged on several federal constitutional grounds by two social media trade industry association in the United States District Court for the Northern District of Florida. Judge Robert Hinkle issued a preliminary injunction on June 30, 2021, which, in-part, found the theme park exclusion to be discriminatory and failing strict scrutiny in *NetChoice LLC*, et al. v. Moody, et al., USDC Case No. 4:21cv220-RH-MAF, which is pending appeal before the 11th Circuit Court of Appeals. Additionally, the bill reenacts certain sections of the Florida Statutes to incorporate the changes made to §501.2041(1)(g), F.S.

Effective date: Upon becoming law.

Approved by Governor: Ch. 2022- , Laws of Florida

2022 SPECIAL SESSION D

The Florida Legislature met in Special Session (2022 D) on May 23-25, 2022, to consider legislation relating to property insurance. On May 24, 2022, the Legislature voted to introduce legislation to address building safety within condominium and cooperative associations motivated by the Champlain Tower South collapse on June 24, 2021, in Surfside (Miami-Dade County), Florida, in which 98 persons died. The Legislature passed two bill SB 2D and SB 4D which were subsequently approved by the Governor on May 26, 2022.

Property Insurance

CS/SB 2D (Sen. Boyd)

The bill makes the following changes to address access and affordability of property insurance, and to mitigate insurance fraud in Florida's property insurance market:

The bill creates the Reinsurance to Assist Policyholders (RAP) program to be administered by the State Board of Administration, and requiring eligible property insurers to obtain

coverage under the program. It authorizes a \$2 billion dollar reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF). The FHCF mandatory retention is \$8.5 billion for the 2022-2023 contract year. Furthermore, it requires the RAP program to reimburse 90 percent of each insurer's covered losses and 10 percent of their loss adjustment expenses up to each individual insurer's limit of coverage for the two hurricanes causing the largest losses for that insurer during the contract year.

- The bill appropriates \$150 million from the General Revenue Fund to the Department of Financial Services' (DFS) My Safe Florida Home Program to provide hurricane mitigation inspections and matching grants under specific conditions. The My Safe Florida Home Program, which DFS administers, will provide financial incentives for Florida residential property owners to obtain free home inspections that identify mitigation measures and provide grants to retrofit such properties, thereby reducing the property's vulnerability to hurricane damage and helping decrease the cost of residential property insurance. The bill also requires the Office of Insurance Regulation to aggregate on a statewide basis and make publicly available certain data submitted by insurers and insurer groups.
- ➤ The bill provides emergency rulemaking power pursuant to F.S. 120.54, and makes a legislative finding that such emergency rule making is necessary in order to address a critical need in the state's problematic property insurance market. The Legislature also finds that the uniquely short timeframe needed to effectively implement this section for the 2022-2023 fiscal year requires that the board adopt rules as quickly as practicable. Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of chapter 120, which must occur no later than July 1, 2023.
- > The bill revises requirements that DFS create reports regarding the history and causes of a property insurer's insolvency. The revisions intend to ensure DFS can carry out its duties when appointed as the receiver of an insolvent property insurer.

Effective date: Upon becoming law, excerpt as otherwise provided. Approved by Governor: Ch. 2022- , Laws of Florida

Building Safety CS/SB 4D (Sen. Boyd)

Under the current Florida Building Code, for any building or structure in which more than 25 percent of the total roof area is being repaired, replaced, or recovered, the entire roof must be in conformance with the effective edition of the Code, requiring additional restoration, as necessary. SB 4D amends the Florida Building Code to stipulate that only the roof section(s) being restored must comply with the effective Code, provided that the rest of the roof area conforms to the 2007 Florida Building Code, or subsequent editions. Additionally, a local government may not adopt by ordinance an administrative or technical amendment to this exception.

The bill requires condominium and cooperative buildings three stories or taller to have "milestone" inspections by December 31st upon reaching 30 years of age, and then every 10 years thereafter.

For such buildings located within 3 miles of the coastline, the milestone inspection must be conducted when the building reaches 25 years of age, and then every 10 years thereafter.

Milestone inspections will be required to be conducted in two phases. The first phase must be conducted by a licensed architect or engineer authorized to practice in the state. A phase two inspection is required if substantial structural deterioration is identified during the milestone inspection. The bill requires a report of each inspection, including the material findings and recommendations in the inspection report, to be delivered to the condominium or cooperative association, and local building officials where the building is located. The bill specifies the report criteria that must be met. The association must distribute a copy of the report and summary prepared by the engineer or architect performing the inspection to each unit owner, and the report must be posted on the association's website.

The bill authorizes local enforcement agencies to prescribe timelines and penalties for compliance, and authorizes the board of county commissioners to establish, by ordinance, timelines for commencing repairs for substantial structural deterioration but no later than 365 days after receiving the inspection report. The bill further requires the Florida Building Commission to review the requirements for milestone inspections under the bill and consult with the State Fire Marshall regarding structural and life safety standards for maintaining and inspecting all types of buildings three stories or more in height, and to make recommendations to the Legislature. The commission is required to provide a written report to the Governor, the President of the Senate, and the Speaker of the House by December 31, 2023.

Additionally, the bill requires condominiums and cooperatives to conduct structural integrity reserve studies every 10 years for buildings that are three stories or higher in height. Reserve amounts are to be determined by a condominium or cooperative association's most recent structural integrity reserve study and, effective December 31, 2024, the members of such an association may not vote to waive or defund reserve accounts. The bill similarly repeals the ability of developers to waive the collection of all types of reserve funds and requires that a structural integrity reserve report be provided to any potential purchaser of a property.

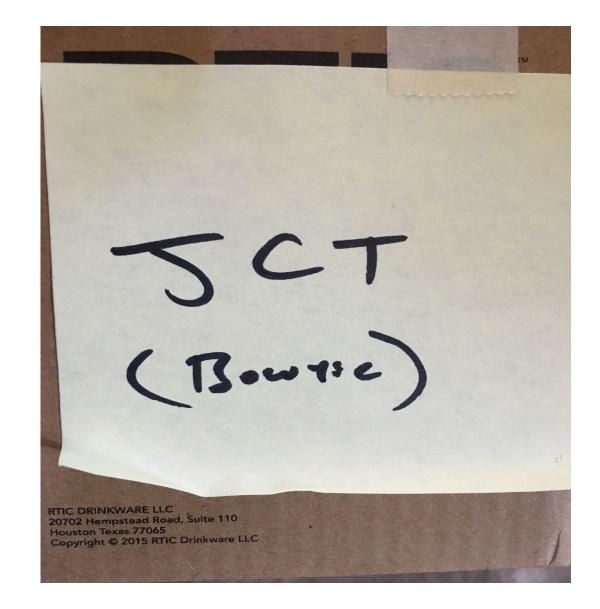
Effective date: Upon becoming law.

Approved by Governor: Ch. 2022-____, Laws of Florida

LESSONS LEARNED – SUCCESSES, FAILURES AND MOVING FORWARD

PRESENTED BY:







The CDC Outside of Atlanta

- **■**Communication
- Documentation
- ■Consistency

Opportunity for Reset/Correction

- New Sheriff Doctrine
- Always the Right Time to Do it Right
 - Allow for publication/dissemination of new policy practice
 - Allow for reasonable time period for significant change (60 days)
- Check for Changes in Job Descriptions
- Check for Changes in Exemption Status
- Internal Promotion Process
- Review for the Little Things (Job Advertisements, Job Offer Letters, etc.)

Conflict Issues - Everyone is Different

- Collaboration
- Competition
- Avoidance
- Accommodation
- Compromise

Specific Actions

- 1. Use *yes, and* statements.
- 2. Don't point fingers.
- 3. Let the person explain themselves, and actively listen.
- 4. Use / statements.
- 5. Maintain a calm tone.
- 6. Show a willingness to compromise or collaborate.
- 7. Don't talk behind people's backs.

Specific Actions (continued)

- 8. Don't take anything personally.
- 9. Pay close attention to nonverbal communication.
- 10. Prioritize resolving the conflict over being right.
- 11. Know when to apologize and forgive.
- 12. Focus on the conflict at hand and not past ones.
- 13. Use humor, when appropriate.
- 14. Remember the importance of the relationship.

Changes to Standard

- Supervisors/Managers are first line of protection and need
 - Education
 - Training or materials on key areas of employment relationship AND who to call for help
 - Perspective
 - Explain why it <u>can</u> happen to them/us
 - Accountability
 - Supervisor = evaluation of supervisory skills, not just general position

After the Fact...

- Poor or Little Training Sometimes Means Poor Actions
- Can Be Based on
 - Not knowing what questions to ask
 - Not knowing how actions affect others
 - Not knowing general legal standard

Diverse Views

A supervisor reports to you that he sent home Beauregard for reacting poorly to Betty's opinion about masks and vaccines. The supervisor describes that all he knows is that he came into the room and Beauregard was screaming at Betty, stating that Betty's failure to recognize risk was going to kill them all. When you ask the supervisor how the situation escalated so quickly, you learn that Beauregard has been wearing a mask when at work, but has been ridiculed by other employees, including Betty. Beauregard has even come to the supervisor to complain, but the supervisor told Beauregard to get over it.

It Is Happening to You

Joe, a married man with two daughters, is more effeminate than the rest of the men on his work team, who frequently go to lunch together and often spend Saturdays hunting at the same camp with one another. Joe becomes emotional one day talking about a particular issue and his supervisor tells him to "toughen up." His coworkers then begin referring to him as "Josephine" and ask him when he is going to start wearing a dress. What is the issue here and what must be done?



True Or False

Hostile Work Environment Is The Same Thing As Quid Pro Quo Harassment.

□ True

☐ False



Pop Quiz

Which of the following supervisory created documents offer both personal and organizational protection from liability?

- A. Interview Assessment
- B. Leadership Log
- C. Corrective Action
- D. Annual Evaluation
- E. Involuntary Separation Memorandum
- F. All Of The Above



Moral Quagmire

You learn from one of your employees that two of his coworkers have been engaging in a sexual affair. He assures you that it is "definitely consensual." Given that one such employee is married, this seems like too sensitive of an issue to touch. What should you do?



Religious Discrimination Update

- Claims Filed with the EEOC in FY 2021 2,111
- Benefits/Damages Recovered by EEOC \$9.5 million
- Percentage of Employees Who Feel Discriminated Against 25-35%
- Percentage of Employees Who Feel They Must Alter Behavior – 20%

Religious Accommodation Considerations

- Education of supervisors to get HR involved a supervisor's belief alone about a claimed religious practice may create exposure
- Religious belief is more than formal or traditional religion it includes
 - theistic beliefs as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.
 - "ultimate ideas" about "life, purpose, and death"
- Accommodation is undue standard, but greater burden is on employee to accept reasonable option by employer.

Religious Discrimination Examples

Morgan asks for time off on October 31 to attend the "Samhain Sabbat," the New Year observance of Wicca, her religion. Her supervisor refuses, saying that Wicca is not a "real" religion but an "illogical conglomeration" of "various aspects of the occult, such as faith healing, self-hypnosis, tarot card reading, and spell casting, which are not religious practices."

Religious Discrimination Examples

Edward practices the Kemetic religion, based on ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. He states that he believes in various deities, and follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra.

Religious Discrimination Examples

Sylvia's job has instituted a policy that employees cannot have visible tattoos while working. Sylvia refuses to cover a tattoo on her arm that is the logo of her favorite band. When her manager asks her to cover the tattoo, she states that she cannot and that she feels so passionately about the importance of the band to her life that it is essentially her religion. However, the evidence demonstrates that her tattoos and her feelings do not relate to any "ultimate concerns" such as life, purpose, death, humanity's place in the universe, or right and wrong, and they are not part of a moral or ethical belief system.

Disability Discrimination Update

- Claims Filed with the EEOC in FY 2021 22,843
- Benefits/Damages Recovered by EEOC \$122.2 million
- Percentage of Employees Who Have and Report a Disability18-22%
- Nearly 50% also are 65 or older

Disability Accommodation Considerations

- Supervisor education is key HR must be involved in almost all medical (including psychological) issues
- Weigh ADA exposure against harm to others objective basis for harm usually trumps perceived disability claim
- Remember FMLA (and leave and benefit considerations)
- May (often does) coincide with workers' compensation claims
- Essential functions do not legally require permanent accommodation
- Consideration of remote work is forever changed

Disability Discrimination Examples

Mandy works as the schedule and communications coordinator at a large high school. She is injured in an accident and requires leave under the FMLA. Mandy is one of two employees in the position and the school will need to hire a third based on the demand for the positions. In Mandy's absence, the school has had other people in other positions fill in when they can for Mandy. At the end of the 12 week FMLA leave, Mandy requests an additional 10 weeks of leave due to her injuries. Mandy's supervisor responds to Mandy's email telling her she does not need to come back to work an hour after getting Mandy's request.

Disability Discrimination Examples

Rodney works as a wood shop or mechanical shop teacher at a school and injures himself in class. This is Rodney's third injury this month, but his first lost time injury. When the previous two injuries occurred, they both were because Rodney failed to use the appropriate safety equipment for the tool he was using at the time. Rodney's supervisor makes sure Rodney gets medical attention and Rodney keeps the supervisor posted as to his progress and potential return. At week ten of the FMLA, Rodney advises he will need an additional four weeks of leave. The supervisor responds that because Rodney probably was not using the proper safety equipment and has cost the school additional money due to his three injuries, he will be separated.

Reminders

- CDC
- The way we did it before is not a valid reason by itself.
- Education

Need More?

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STRANGE AND UNUSUAL...

TAILES FROM THE PURCHASING DEPARTMENT

EVAN ROSENTHAJ KERRY PARSONS

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MAIBORS, GIIBLIN & NICKERSON

Outline

- CCNA Refresher
- Quirky Issues Related to Federal Grants: cost/price analysis and CMAR/Design Build
- Sovereign Immunity and Indemnification: how to best protect the your County.
- Cooperative Purchases: from piggybacking to GSAs and the in-between.
- Sole versus Single Sourcing: there is a difference!
- Noncompetitive Procurements for Federal Federally funded goods and services: Not what you would expect.
- Procurements and Grants: how they impact one another.
- Buy America/Build America: The hot topic of the summer or at least it will be.
- Questions

5 of the Top 10 Ways the Purchasing Department is Attempting to Drive You Insane

- They have somehow unearthed and used form documents from 1987 despite you having stood over their shoulder and personally deleted them from their computer on multiple occasions.
- 2. They changed the statutory public records font from 14 pt to 12 pt, AGAIN!
- 3. They insist a procurement meets the "emergency" exemption in your purchasing policy when the only emergency is that they forgot to re-solicit.
- 4. Purchasing swears it is a sole source. A two second Google search shows that it is not.
- 5. They don't respect the "Cone of Silence."

CCNA Refresher

- "Professional Services" Architects, engineers, landscape architects, surveyors/mappers
- Three Steps:
 - 1. Public Announcement and Qualification
 - 2. Competitive Selection
 - 3. Competitive Negotiation
- Continuing Contracts Construction Cost less than \$4M or study activity less than \$500,000

Quirky Issues RE: Federal Grants and 2 CFR 200

- Cost/Price Analysis 2 CFR 200.324
- Use of Design Build/Construction Manager at Risk (CMAR) Procurements

Cost/Price Analysis

• 2 CFR 200.324 (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

• Simplified Acquisition Threshold – Currently \$250,0000.

Cost/Price Analysis

 Independent Cost Estimate - Review and evaluation of the separate cost elements (labor, overhead, materials, etc.) and proposed profit or fee in a proposal to determine a fair and reasonable price. Cost analysis includes the application of judgment to determine how well the proposed costs represent what the cost of the contract should be.

• What about CCNA Procurements? <u>See</u> 2 CFR 200.320(b)(2)(iv) (A/E procurements) and 2 CFR 200.324(b) (negotiation of profit where there is no price competition).

Design/Build and CMAR Under Federal Grants

- Design/Build and CMAR approaches becoming more common. But not expressly contemplated under 2 CFR 200.
- 2 CFR 200.320(b)(2)(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- Can Design/Build or CMAR procurements be structured so they are consistent with 2 CFR 200?



Design/Build and CMAR Under Federal Grants

Design/Build

- Authorized under Sec. 255.20, 287.055, F.S.
- Two Options:
 - Qualifications Based Selection Follow standard CCNA process, establish guaranteed maximum price (GMP) and completion date with firm as part of competitive negotiations.
 - Competitive Proposal Selection Prepare design criteria package, Qualifications based selection of no fewer than 3 firms, then competitive proposals from firms based on evaluation criteria including price.

CMAR

- Authorized under Sec. 255.103, F.S. Requires use of CCNA qualifications based selection process.
- CMAR can self-perform construction or bidding process can be established.

Sovereign Immunity and Indemnification Issues



Sovereign Immunity

- Exemptions must be expressly granted, clear, and unequivocal. *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459 (Fla. 2005)
- Article X, Section 13, Fla. Const. "provision shall be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."
- Current Statutory Caps \$200,000 per person/\$300,000 per occurrence (Sec. 768.28, F.S.). Efforts to raise caps during 2021 Legislative session failed (HB 985/SB 974).

Indemnification andSovereign ImmunityIntersect

- Can counties contractually waive sovereign immunity caps in Sec. 768.28, F.S.?
- Distinction between suits brought to recovery damages in tort and cases involving indemnification provisions in an express written contract
- Courts have interpreted general law authorization to contract as implied waiver of sovereign immunity. *Pan-Am*, 471 So. 2d at 5; *Fla. DOT v. Schwefringhaus*, 188 So. 3d 840 (Fla. 2016)
- Florida Supreme Court has held that *cities* can contractually waive sovereign immunity above statutory cap. *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459 (Fla. 2005)

Indemnification

- Own negligence provisions Must be explicit per Florida law.
- Sec. 725.06, F.S. Controls indemnification for construction contracts.
- Sec. 725.08, F.S. Controls indemnification for professional services contracts related to construction, maintenance, operation of public facilities, land, and utilities.

The Remaining 5 of the Top 10 Ways the Purchasing Department is Attempting to Drive You Insane

- When an outside engineering firm working on a county project decides to rewrite all of the County's procurement forms – because they know best!
- 2. When you tell a purchasing employee, as a reminder, to include a standard certification form with the procurement and they claim to have no knowledge of the certificate form. The form is an attachment to the adopted purchasing manual and the employee originally drafted the form.
- 3. When a consultant is a professional engineer but they insist the work does not fall within CCNA because the scope of work, in their opinion, is not "technically" engineering (but it is);
- 4. When a request comes in to provide legal review after the procurement has already hit the street or after the contract is already signed and effective.
- 5. When they tell you it's a piggyback, but they give you an expired agreement from another jurisdiction, for goods that are "essentially" the same (spoiler alert: they aren't the same).

Cooperative Purchases

- Cooperative purchases take on many shapes and sizes and include:
 - Piggybacking;
 - True Cooperative Purchases;
 - Third Party Aggregators;
 - GSA Schedules

Piggybacking

- One or more organizations combine their requirements and solicit bids or offers for goods or services.
- Things to review and consider:
 - Does the procurement meet the minimum requirements or the County's purchasing manual for competition?
 - Is piggybacking permitted? Is there an assignability clause?
 - What are the terms and conditions?
 - Has it expired? Do you have a complete copy of the procurement and award?
 - Is the procurement using Federal funds?
- Example: Florida State Term Contracts (eligible users include counties, Rule 60A-1.001, Fla. Admin. Code).

True Cooperative

- Two or more organizations combine their requirements and solicit bids or offers for goods or services.
 - Example: For purposes of shared grant funding or programs, a county and city create an Interlocal Agreement establishing the combine requirements for solicitations of goods and services under the grant program and the method of solicitation that includes both agencies requirements.
 - When the federal government encourages cooperative procurements – this is what it is talking about, not necessarily piggybacking.

Third Party Aggregators

- An organization brings together multiple organizations to represent their requirements and manage the resulting contract or contractor.
 - Examples:
 - Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE), see s. 946.515, Fla. Stat.
 for inmate work programs.
 - RESPECT of Florida

GSA Schedules

The US Government's General Services
Administration (GSA) maintains a large list of
multiple award purchasing schedules. Contractors
are selected for GSA Multiple Award Schedules
through an open and continuous qualification
process instead of a competitive bids or proposals.
GSA users seek competition from multiple GSA
contractors at the point of sale by obtaining
quotations. GSA requires most favored customer
pricing, which provides state and local
governments with a price advantage. There is a
surcharge associated with GSA purchases called the
Industry Funding Fee (IFF).

When Can a County use a GSA

- The GSA Office of Acquisition Policy (OAP)
 has been delegated the authority in GSA
 Order ADM 5450.39D, Chapter 6 to make
 determinations of eligibility for entities to
 use GSA sources in accordance with GSA
 Order OGP 4800.21.
- State and local governments under the GSA Orders are allowed to use certain GSA sources of supply.

What sources of GSA supply may a local government use?

Cooperative Purchasing. Allows for Schedule 70 (Information Technology and Telecommunications Hardware, Software and Professional Services) and Schedule 84 (state and local law enforcement and security products and disaster recovery services) for supplies and services available under those Federal supply schedule.

Disaster Purchasing Program. Allows for the purchase of products and services to be used to facilitate recovery from major disasters declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, to facilitate disaster preparedness or response, or to facilitate recovery from terrorism, or nuclear, biological, chemical, or radiological attack.

1122 Program. Allows for the purchase of equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. GSA maintains the catalog of available products under this program.

Public Health Emergencies. Allows for State, local, territorial, and tribal governments may access Federal Supply Schedules as authorized users for goods and services when expending Federal grant funds in response to Public Health Emergencies declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act, codified at 42 U.S.C. § 247d.

Cooperative Procurements using GSA

- GSA recommends using the Federal Schedule Ordering Procedures. However, following federal ordering guidelines is not mandated. State and local buyers must follow the competitive procedures outlined by their state and local regulations and procedures.
- If grant money is being used, state and local buyers must follow the ordering and competitive procedures that meet their local procurement regulations and the regulations and procedures outlined by the granting agency.
- The flow down of GSA terms and conditions is outlined by GSAR Clause 552.238-79(a)(3).
- In general, when state or local governments place orders, all terms and conditions of the contractor's Schedule flow down to the order level, except the following: Disputes Clause, Patent Indemnity Clause, Prompt Payment Clause, and Certain Commercial Item Contract Terms and Conditions.
- Buyers may add additional terms and conditions or enhancements to Schedule terms and conditions as long as they do not conflict with the base-level Schedule terms and conditions.

Single Sourcing vs. Sole Sourcing

Single Source – is a commodity or service that can be purchased from multiple sources, but, in order to meet certain functional or performance requirements (e.g., parts matching existing equipment or materials) there is only one economically feasible source for the purchase.

Sole Source - is a commodity or service that can be legally purchased from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase, if, there is more than one potential supplier for that item. Use of Brand Names and Model numbers does not constitute a sole source.

Noncompetitive Procurements-Federal

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

How Is "Public Exigency and "Emergency" Defined?

"Exigency" the existence of a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the County.

"Emergency" The existence of a threat to life, public health or safety, or improved property requiring immediate action to alleviate the threat.

The public exigency or emergency for the requirement will not permit delay resulting from a competitive solicitation.

The exception only applies for work specifically related to the circumstances and only while the circumstances exist and must transition to a competitively procured contract as soon as the circumstances cease to exist.

Grants – Correlation with procurements and Contracts & What to Look Out For

At a minimum, almost all grants, state or federal, will expressly state some provisions that must be included within any procurement and/or contract or will cite to particular provisions.

Failure to include provisions required can be grounds for a deobligation at a later date.

A new trend is the requirement to seek approval of procurements and contracts ahead of time. Generally, grant documents will expressly state whether approval must be sought.

Hot Topic Issue: Buy America

- Traditionally, "Buy America" refers to several statutes and regulations that apply to federal financial assistance used to support infrastructurerelated projects, principally those involving highways, public transportation, airports, aviation, and intercity passenger rail. Also apply to certain federally funded water related infrastructure projects.
- The requirements are administered by various Federal agencies, including FTA, FAA, Federal Highway Admin. and EPA, to name just a few. Each agency that regulates maintains its own regulations and monitors grantees' performance.
- As a result of the November 2021 Infrastructure Investment and Jobs Act (IIJA) and Executive Order 14005, "Buy America" requirements have been expanded to other infrastructure projects, including broadband, electrical utilities, and other misc. programs such as the clean school bus program.

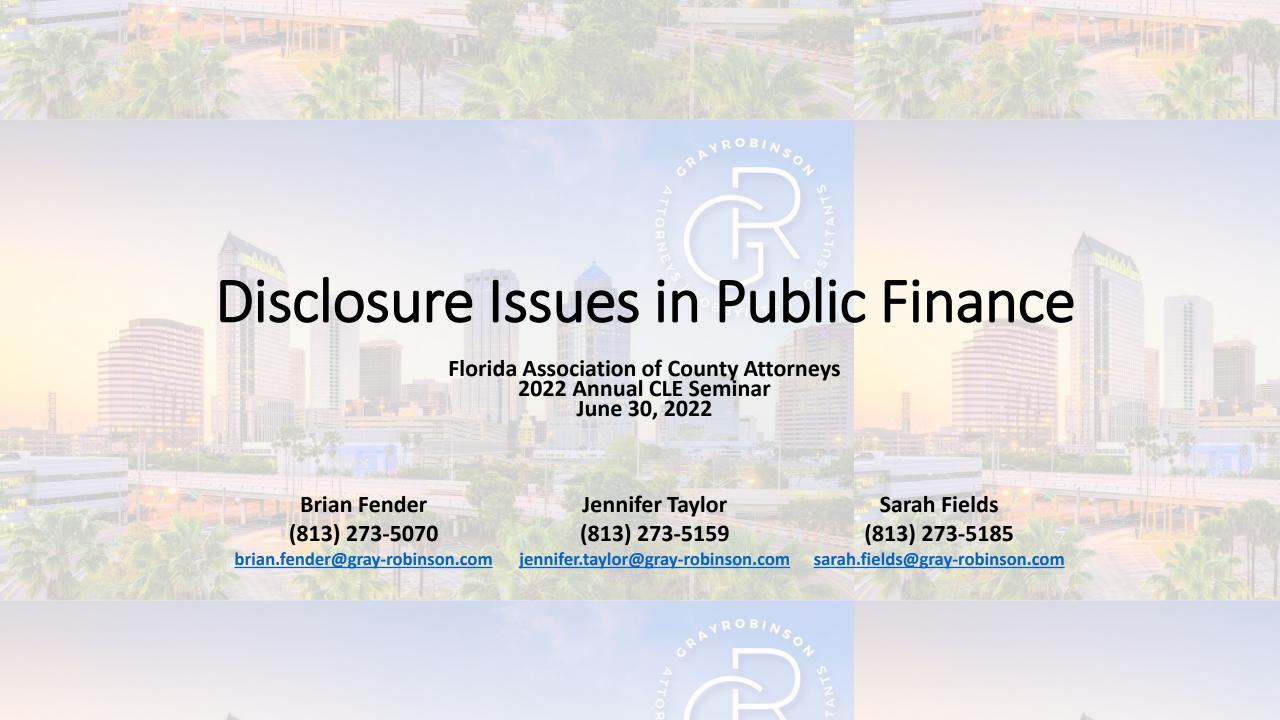
2021 Buy America Expansion Includes:

- Not just iron, steel, and certain manufactured goods, but broadens coverage to include nonferrous metals, such as cooper used in electric wiring; plastic – and polymer-based products; glass, including optical fiber, and certain other construction materials, such as lumber and drywall. Cement and aggregates not included (for now).
- Manufactured goods must contain greater than 55% domestic content and be manufactured in the United States to be considered "produced in the United States."

When is Expanded Buy America Effective, Waivers and Issues Surrounding Implementation

- 180 days from enactment May 2022. Be on the lookout for granting agencies to start requiring implementation in existing grant programs as well as new programs.
- Waivers are limited and must be reviewed and approved by Made in America Office within the Federal Office of Management and Budget.
- Problems that are likely to arise this summer: the implementation is complicated; supply chain may see impact; there likely will be a higher project costs; and legal challenges to enforcement and implementation will arise.

QUESTIONS



Disclosure Issues in Public Finance

- Overview of Municipal Securities Laws
- Notable and Recent SEC Enforcement Actions
- Emerging Trends in Disclosure

Overview of Municipal Securities Laws

Overview of Municipal Securities Laws

- Securities Exchange Commission ("SEC") Rule 15c2-12, promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")
- SEC Rule 10b-5
- State Securities (or Blue Sky) Laws

Rule 15c2-12

- By its terms regulates underwriters only
- But de facto regulates municipal issuers of debt
- Requires certain primary and secondary disclosures

Rule 15c2-12 – Required Primary Disclosures

- Requires a Preliminary Official Statement ("POS") deemed final, except for "Permitted Omissions" as of its date
- Requires delivery of a final Official Statement ("OS") within 7 business days after any final agreement to purchase, offer or sell municipal securities in an offering
- Requires written agreement to provide annual financial information, audited financial statements and notice of events

Rule 15c2-12 – Required Continuing Disclosures

- Annual financial information and audited financial statements
- Notice of Listed Events within 10 business days of occurrence
- "New" Listed Events certain "Financial Obligations" and impending defaults

Voluntary v. Required Disclosures

- COVID-19 impacts
- Investor relations
- Rule 10b-5 issues

Disclosure Policies & Procedures

- For both primary and continuing disclosures
- Tailor them to your government and include training
- Counties should have them and follow them

Notable and Recent SEC Enforcement Actions

Securities Law Enforcement

- Over 30 SEC enforcement actions dealing with Issuers in the last decade
- Recent actions evidence Public Finance Abuse Unit at the SEC is increasing its activity and level of penalties
- Note that SEC does not need to prove alleged disclosure violation resulted in bond default, loss of value or any finance harm to investors
- Common Theme: Inadequacy of internal training and procedures ensuring accurate disclosure in Official Statements

Types of Enforcement Charges Brought Against Issuers

- Failure to disclose legal or financial risks
- Provided incomplete or misleading disclosure about issuer's financial condition
- Failure to disclose a project's risk or the potential impact of a project's failure
- Failure to comply with continuing disclosure obligations
- Inadequate disclosure regarding pension funding deficits

Failure to Disclose Certain Risks

- City of South Miami, FL (2013)
 - Failure to disclose certain actions in first issuance affecting second issuance
- Port Authority of New York and New Jersey (2017)
 - Failure to disclose legal risk of intended use of bond proceeds
- Town of Oyster Bay, NY (2017)
 - Failure to disclose town's guarantees of private loans thereby hiding the existence and potential financial impact of such loans

Failure to Accurately Describe Financial Condition of Issuer

- City of Miami, FL (2013)
 - Failure to disclose amounts and effects of transfer of moneys between funds
- City of Allen Park, MI (2014)
 - City failed to disclose budget gap that was to be privately funded
- Westlands Water District, CA (2016)
 - Failure to disclose that historical coverage was only met by approved one-time accounting transfer between certain reserve accounts
- City of Harvey, IL (2014)
 - Failure to disclose diversion of bond proceeds for improper purposes
- San Diego County School District (2021)
 - "Presented stale and misleading financial information as current and accurate"
- Louisiana Town and Former Mayor (2022)
 - "Overstating numbers of historical and projected sewer customers"

Failure to Disclose Risk of Project or Impact of Project's Failure

- City of Allen park, MI (2014)
 - Deteriorating prospects for project not adequately disclosed
- City of Harvey, IL (2014)
 - Improper use of bond proceeds from prior issuances
- Rhode Island Commerce Corporation (2016)
 - Highlights need to disclose the "whole financial picture"

Failures of Continuing Disclosure

- City of Beaumont, CA (2017)
 - Failure to disclose multiple missed or late filings and missing information in annual reports required by continuing disclosure agreement
- City of Harrisburg, PA (2013)
 - Failure to meet continuing disclosure obligations makes it more likely that investors will seek out other public statements for information

Inadequate Pension Disclosures

Generally focused on failure to adequately disclose pension funding shortfalls and potential future budget difficulties due to increased pension contributions

- City of San Diego (2006)
- State of New Jersey (2010)
- State of Illinois (2013)
- State of Kansas (2014)

Results of Enforcement Actions

- Civil Fines
- Consent Decrees
- Required to engage outside legal counsel to oversee disclosure practices
- Bad publicity, political damage, financial market consequences

Emerging Trends in Disclosure

Corporate Trends

- 2020 Amendments to Regulation S-K
 - Emphasis on materiality
 - Focus on concise, specific disclosure

ESG - What It Is

- Environmental
- Social
- Governance

ESG – Why It Matters

- Investor impact
- Rating agency action
- Regulatory review
- Political considerations

ESG – Regulatory Review

- Currently no universally recognized definition for muni bonds
- MSRB request to stakeholders for information
- SEC regulatory actions

Climate Change – Regulatory Guidance

- 2010 SEC Guidance Regarding Disclosure Related to Climate Change
- February 2021 SEC Statement on the Review of Climate-Related Disclosure
- March 2021 SEC Enforcement Task Force Focused on Climate and ESG Issues

Climate Change – FGFOA Guidance

- Examples of environmental factors governments should consider discussing:
 - Inland flooding, tornadoes, drought, snow/ice storms and other extreme weather conditions
 - Climate change affecting agriculture, infrastructure, major industries and tax base
 - Frequency and intensity of wildfires
 - Frequency and strength of hurricanes and flooding
 - Sea level rise in coastal communities
 - Water supply (quality and quantity)
 - Diversity of power generation sources and transition plans by providers

Climate Change – Disclosure Considerations

- Geography
- Identify risks
- Describe mitigation actions
- Consider policies and procedures in place and implementation

Cybersecurity - Background

- Impacts can include:
 - Reputational damage
 - Inability to provide essential services
 - Compromising of residents' or employees' personal information
 - Costs associated with recovery and prevention of future attacks

Cybersecurity – Regulatory Guidance

- "Disclosure Guidance: Topic No. 2 Cybersecurity (SEC Division of Corporation Finance, Oct. 13, 2011)
- "Statement and Interpretive Guidance on Public Company Cybersecurity Disclosures" (SEC, Feb. 26, 2018)

Cybersecurity – Disclosure Considerations

- Occurrence of prior cybersecurity incidents, including their severity and frequency
- Probability of occurrence and potential magnitude of cybersecurity incidents
- Policies and procedures in place and implementation
- Costs associated with maintaining cybersecurity protections

Concluding Thoughts

- Understanding the overriding purpose of disclosure to provide investors with information as to what may make an investment in an specific obligation to be issued possibly speculative or risky
- Questions?