

<b>Tab 1</b>	<b>SB 1730 by Lee;</b> (Compare to CS/H 00207) Growth Management						
191038	D	S	RCS	CA, Lee	Delete everything after	03/21 12:34 PM	
<b>Tab 2</b>	<b>CS/SB 380 by BI, Brandes;</b> (Identical to CS/H 00617) Homeowners' Insurance Policy Disclosures						
<b>Tab 3</b>	<b>SB 1244 by Wright;</b> (Identical to H 00641) Community Development District Bond Financing						
<b>Tab 4</b>	<b>SB 710 by Baxley;</b> (Similar to H 01261) Administrative Review of Property Taxes						
166472	A	S	RCS	CA, Baxley	Delete L.53 - 91:	03/21 11:59 AM	
<b>Tab 5</b>	<b>SB 1800 by Gibson;</b> (Compare to H 01333) Florida Building Code						
440776	A	S	L RCS	CA, Gibson	Delete L.49:	03/21 11:59 AM	
<b>Tab 6</b>	<b>SB 724 by Hooper (CO-INTRODUCERS) Baxley;</b> (Identical to H 00805) Residential Swimming Pool Safety						
707110	A	S	RCS	CA, Hooper	Delete L.60 - 93:	03/21 11:59 AM	
<b>Tab 7</b>	<b>SB 1004 by Rodriguez;</b> (Similar to CS/H 00995) Regional Agency and Regional Planning Council Meetings						
237962	D	S	L RCS	CA, Rodriguez	Delete everything after	03/21 11:30 AM	
<b>Tab 8</b>	<b>SB 1490 by Simmons (CO-INTRODUCERS) Baxley, Gruters;</b> (Compare to H 06035) First Responder Property Tax Exemption						

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMUNITY AFFAIRS**  
**Senator Flores, Chair**  
**Senator Farmer, Vice Chair**

**MEETING DATE:** Wednesday, March 20, 2019

**TIME:** 4:00—6:00 p.m.

**PLACE:** 301 Senate Building

**MEMBERS:** Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1730</b> Lee (Compare CS/H 207, S 144)	Growth Management; Prohibiting a county from adopting or imposing a requirement in any form relating to affordable housing which has specified effects; requiring that a county review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; requiring a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities, etc.  CA 03/20/2019 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0
2	<b>CS/SB 380</b> Banking and Insurance / Brandes (Similar S 550, Identical CS/H 617)	Homeowners' Insurance Policy Disclosures; Revising circumstances under which insurers issuing homeowners' insurance policies must include a specified statement relating to flood insurance with the policy documents at initial issuance and renewals, etc.  BI 02/19/2019 Fav/CS CA 03/20/2019 Favorable RC	Favorable Yeas 5 Nays 0
3	<b>SB 1244</b> Wright (Identical H 641)	Community Development District Bond Financing; Requiring district boards to authorize bonds by a two-thirds vote of the members, etc.  CA 03/20/2019 Favorable FT RC	Favorable Yeas 5 Nays 0
4	<b>SB 710</b> Baxley (Similar H 1261)	Administrative Review of Property Taxes; Providing that, in certain counties, a petition to the value adjustment board may be filed late for good cause; defining the term "good cause"; requiring that late filed petitions be filed within a specified timeframe, etc.  CA 03/20/2019 Fav/CS FT RC	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Wednesday, March 20, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1800</b> Gibson (Compare H 1333)	Florida Building Code; Authorizing the Florida Building Commission to adopt certain triennial amendments, etc.  CA 03/20/2019 Fav/CS IT RC	Fav/CS Yeas 5 Nays 0
6	<b>SB 724</b> Hooper (Identical H 805)	Residential Swimming Pool Safety; Citing this act as "The Kacen's Cause Act"; requiring a home inspector to include certain information relating to swimming pools in his or her report; requiring that new residential swimming pools meet an additional requirement in order to pass final inspection and receive a certificate of completion, etc.  IT 03/06/2019 Favorable CA 03/20/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0
7	<b>SB 1004</b> Rodriguez (Similar CS/H 995)	Regional Agency and Regional Planning Council Meetings; Providing requirements for establishing a quorum for meetings of certain agencies and councils when a voting member appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication; requiring notice of intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication by a specified time, etc.  CA 03/20/2019 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0
8	<b>SB 1490</b> Simmons (Compare H 6035)	First Responder Property Tax Exemption; Revising the definition of the term "first responder," for purposes of the tax exemption, to include law enforcement officers and firefighters who sustained a total and permanent disability in the line of duty while serving as full-time paid employees in another state, etc.  CA 03/20/2019 Favorable FT AP	Favorable Yeas 5 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1730

INTRODUCER: Community Affairs Committee and Senator Lee

SUBJECT: Community Development and Housing

DATE: March 21, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	<b>Fav/CS</b>
2.			IS	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1730 amends various statutes relating to growth management. The bill restricts the ability of a county or municipality to adopt and enforce inclusionary housing ordinances or regulations. After receiving an application for approval of a development permit or order, the bill requires a county and municipality to review the application for completeness and issue a response to an applicant within a specified period of time. The bill requires a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities.

The bill also requires the collection of an impact fee occur no earlier than the issuance of builder permit for the property that is subject to the fee. The bill also codifies the ‘dual rational nexus test’ for impact fees as articulated in case law. Other requirements of the bill include earmarking impact fees for capital facilities that benefit new residents and prohibiting the use of impact fee revenues to pay existing debt unless specified conditions are met. Additionally, the bill prohibits a local government from charging an impact fee for the development or construction of affordable housing. A local government may provide a waiver for the impact fee for the development or construction of affordable housing and is not required to use any revenue to offset the impact. The bill revises the definition of the term “mortgage loan.”

## II. Present Situation:

### Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>3</sup> Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or by general law.<sup>4</sup>

### *Local Government Revenue Sources Based on Home Rule Authority*<sup>5</sup>

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>6</sup> regulatory fees, and special assessments<sup>7</sup> to pay the cost of providing a facility or service or regulating an activity. Each fee imposed under a local government's home rule powers should be analyzed in the context of requirements established in Florida case law that are applicable to its validity.

Regulatory fees are home rule revenue sources that may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Two principles guide the application and use of regulatory fees. The fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

Special districts do not possess home rule powers; therefore, special districts may impose only those taxes, assessments, or fees authorized by special or general law.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

<sup>4</sup> Section 189.031, F.S. See also *State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So. 2d 1067 (Fla. 1st DCA 1982).

<sup>5</sup> Office of Economic and Demographic Research, The Florida Legislature, *2018 Local Government Financial Handbook*, 9-13, available at <http://edr.state.fl.us/Content/local-government/reports/lgh18.pdf> (last visited March 18, 2019).

<sup>6</sup> Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>7</sup> Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>8</sup> See ch. 189, F.S. See also State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Handbook 2018-2020*, 70, available at <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3025> (last visited March 18, 2019).

## Impact Fees

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.<sup>9</sup> Examples of capital facilities include the provision of additional water and sewer systems, schools,<sup>10</sup> libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2017, the most recent year for which the Office of Economic and Demographic Research (EDR) has impact fee data, 35 counties reported impact fee revenues totaling \$629.1 million, 194 cities reported impact fee revenues of \$279.7 million, and 28 school districts reported impact fee revenues of 329.7 million.<sup>11</sup>

### *Florida Impact Fee Act*

In response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act in 2006, which requires local governing authorities to satisfy certain requirements when imposing impact fees.<sup>12</sup> The Act was amended in 2009 to impose new restrictive rules on impact fees by requiring local governments to shoulder the burden of proof when an impact fee is challenged in court and prohibiting the judiciary from giving deference to local government impact fee determinations.<sup>13</sup>

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

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<sup>9</sup> See supra note 5.

<sup>10</sup> *Id.* With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board. The fee amount is usually determined after a study of the actual impact/costs of new residential construction on the school district has been made.

<sup>11</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited March 18, 2019).

<sup>12</sup> Section 163.31801, F.S.

<sup>13</sup> Chapter 2009-49, Laws of Fla., creates a "preponderance of the evidence" standard of review placing the burden of proof on the local government to show that the imposition or amount of an impact fee meets the requirement of case law and s. 163.31801, F.S.

### ***Dual Rational Nexus Test***

While s. 163.31801, F.S., outlines many characteristics and limitations of impact fees, case law serves an integral role in the impact fee process in Florida. As developed under case law, an impact fee imposed by a local government should meet the ‘dual rational nexus test’ in order to withstand legal challenge.<sup>14</sup> A number of court decisions have addressed the dual rational nexus test and challenges to the legality of impact fees.<sup>15</sup>

In *Hollywood, Inc. v. Broward County*,<sup>16</sup> the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.<sup>17</sup> In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.<sup>18</sup>

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.<sup>19</sup> The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city’s water and sewer system.<sup>20</sup>

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and

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<sup>14</sup> See supra note 4.

<sup>15</sup> See, e.g., *Contractors & Builders Ass’n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors’ Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).

<sup>16</sup> *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).

<sup>17</sup> *Id.* at 611.

<sup>18</sup> *Id.* at 611-12.

<sup>19</sup> *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

<sup>20</sup> *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.<sup>21</sup>

### ***Timing of Collection for Impact Fees***

Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies.<sup>22</sup> For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fees to be deferred in certain circumstances.<sup>23</sup> In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.<sup>24</sup>

### **Concurrency and Proportionate Share**

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water.<sup>25</sup> Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011, the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act (CPA).<sup>26</sup> Many local governments continue to exercise the option to impose concurrency on transportation and school facilities. If local governments elect to retain public education facilities concurrency, then their comprehensive plans must comply with the requirements included in s. 163.3180(6), F.S.

Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.<sup>27</sup> Local governments are charged with setting LOS standards within their jurisdiction, and if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted

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<sup>21</sup> Committee on Community Affairs, The Florida Senate, *Impact Fees*, 4 (Issue Brief 2010-310) (Sept. 2009), available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-310ca.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf) (last visited March 18, 2019).

<sup>22</sup> Common benchmark development actions include plat approval, building permitting, and certificate of occupancy. A 2015 national impact fee study by Duncan Associates entitled *State Impact Fee Enabling Acts* identified 29 states with impact fee enabling acts. The study found that “about one-third of enabling acts allow impact fees to be collected at any time during the development process. Most of the others provide that impact fees cannot be collected prior to the building permit or certificate of occupancy.” See [http://impactfees.com/publications%20pdf/state\\_enabling\\_acts.pdf](http://impactfees.com/publications%20pdf/state_enabling_acts.pdf) (last visited March 18, 2019).

<sup>23</sup> Orange County Government, Florida, *Residential Impact Fees*, available at <http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl>. (last visited March 18, 2019).

<sup>24</sup> Volusia County, Florida, *Frequently Asked Questions on Impact Fees*, available at <https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml> (last visited March 18, 2019).

<sup>25</sup> Section 163.3180(1), F.S.

<sup>26</sup> Chapter 2011-139, s. 15, Laws of Fla.

<sup>27</sup> Section 163.3180, F.S.

level of service. Proportionate share requires developers to contribute to or build facilities necessary to offset a new development's impacts.<sup>28</sup> Local governments may require proportionate share contributions from developers for both transportation and school impacts.<sup>29</sup>

For school proportionate share mitigation, the impact fee should be reduced by an amount equal to the per unit amount of any previously paid or agreed to proportionate share mitigation.<sup>30</sup> A variety of scenarios for the crediting of impact fees are possible among school districts, and each proportionate share methodology should clearly define how these credits are to be applied and the procedures to be followed.

### **Affordable Housing**

Affordable housing is generally defined in relation to the annual area median income of the household living in the housing adjusted for family size. Section 420.9071(2), F.S., within the State Housing Initiatives Partnership (SHIP)<sup>31</sup> Program defines "affordable" to mean that monthly rents or monthly mortgage payments, including taxes and insurance, do not exceed 30 percent of that amount which represents the percentage of the median annual gross income for:

- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income for the area;<sup>32</sup>
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income for the area;<sup>33</sup>
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income for the area.<sup>34</sup>

With respect to rental units, a household's annual income at initial occupancy may not exceed the three threshold percentages above. While occupying the unit, the household's annual income may increase to an amount not to exceed 140 percent.<sup>35</sup>

The Florida Housing Finance Corporation administers the SHIP Program that provides funds to all 67 counties and Florida's larger cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans<sup>36</sup> and the State Apartment Incentive Loan (SAIL) Program that provides low-interest loans on a competitive basis to affordable housing developers each year.

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<sup>28</sup> Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from [http://www.cutr.usf.edu/pdf/DCA\\_TCBP%20Guide.pdf](http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf) (last visited March 18, 2019).

<sup>29</sup> Sections 163.3180(5) and 163.3180(6), F.S.

<sup>30</sup> See s. 163.3180(6)(h)2., F.S.

<sup>31</sup> See ss. 420.907-420.9089, F.S. Administered by Florida Housing Finance Corporation, the SHIP Program provides funds to all 67 counties and Florida's larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

<sup>32</sup> Section 420.9071(28), F.S.

<sup>33</sup> Section 420.9071(19), F.S.

<sup>34</sup> Section 420.9071(20), F.S.

<sup>35</sup> See ss. 420.9071(19), (20), and (28), F.S.

<sup>36</sup> See ss. 420.907-420.9089, F.S.

### ***Inclusionary Housing***

In 2001, the Legislature created ss. 125.01055<sup>37</sup> and 166.04151, F.S.,<sup>38</sup> that provides “[n]ot withstanding any other provision of law, a county (municipality) may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.”

Inclusionary housing ordinances (sometimes called inclusionary zoning ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the development of market rate units.<sup>39</sup> The intent of these ordinances is to increase the production of affordable housing in general and to increase the production in specific geographic areas that might otherwise not include affordable housing.<sup>40</sup>

Elements of an inclusionary zoning ordinance typically include a minimum project size, a percentage set aside, density bonus, and costs offsets. The threshold size must be large enough to contribute to the financial feasibility of the required affordable units. The share of affordable units varies, and requirements for developers to set aside 10 to 25 percent of their new housing developments as affordable are most common. A density bonus allows a developer to construct a certain number of additional market rate units beyond what is normally allowed under the current zoning ordinance, in exchange for providing a specified number of affordable units. To enable the construction of affordable housing, developers may be given waivers from certain development standards and receive waivers, for fees, such as demolition, water and sewer charge, and utility connection fees. Developers may be eligible for reduced parking requirements and other benefits, such as expedited permitting.<sup>41</sup>

### **Development Permit Process**

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>42</sup>

Sections 125.022(1) and 163.033(1), F.S., provide that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county or the municipality is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at

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<sup>37</sup> Ch. 2001-252, s. 16, Laws of Fla.

<sup>38</sup> Ch. 2001-252, s. 15, Laws of Fla.

<sup>39</sup> Jamie Ross and Uma Outka, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, available at <https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf> (last visited March 18, 2019).

<sup>40</sup> *Id.*

<sup>41</sup> See Florida Housing Coalition, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff* available at <http://www.flhousing.org/wp-content/uploads/2012/03/AHAC-Guidebook-2017.pdf> (last visited March 18, 2019).

<sup>42</sup> Section 163.3164(16), F.S.

the applicant's request, must proceed with processing the application. These sections do not apply to building permits.<sup>43</sup>

When a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.<sup>44</sup>

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit.<sup>45</sup> The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.<sup>46</sup> A county or municipality must attach such a disclaimer to the issuance of a development permit and must include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development.<sup>47</sup>

## **Federal Oversight of Mortgage Brokerage Industry**

### ***Secure and Fair Enforcement for Mortgage Licensing Act of 2008***

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.<sup>48</sup> Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or the "S.A.F.E. Mortgage Licensing Act of 2008" (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.<sup>49</sup>

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<sup>43</sup> See ss. 125.022(3) and 166.033(3), F.S.

<sup>44</sup> See ss. 125.022(2) and 166.033(2), F.S.

<sup>45</sup> See ss. 125.022(4) and 166.033(4), F.S.

<sup>46</sup> See ss. 125.022(5) and 166.033(5), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Pub. L. No. 110-289.

<sup>49</sup> NLMS Resource Center, available at <http://mortgage.nationwidelicingsystem.org/about/Pages/default.aspx> (last visited March 20, 2019).

### ***Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010***

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.<sup>50</sup> The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)<sup>51</sup> and the Real Estate Settlement Procedures Act (RESPA).<sup>52</sup> The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made “primarily for a business, commercial or agricultural purpose.”<sup>53</sup> Therefore, TILA and RESPA do not cover “business purpose” mortgage loans but rather only “consumer purpose” mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower’s total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,<sup>54</sup> and the CFPB issued final rules in 2015.<sup>55</sup> The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule. However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.<sup>56</sup>

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<sup>50</sup> Pub. L. No. 111-203.

<sup>51</sup> 15 U.S.C. 1601, *et. seq.*

<sup>52</sup> 12 U.S.C. 2601, *et. seq.*

<sup>53</sup> Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at

<https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/> (last visited March 20, 2019).

<sup>54</sup> 12 U.S.C. ss. 5532(f) and 2603; 15 U.S.C. s. 1604(b).

<sup>55</sup> 78 Fed Reg 79730.

<sup>56</sup> See CFPB, *TILA-RESPA Integrated Disclosure Rule: Small Entity Compliance Guide*, available at

[http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo\\_smallentitycomplianceguide\\_v4\\_10072016.pdf](http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf) (last visited March 20, 2019).

## State Regulation of Mortgage Loans

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.<sup>57</sup> Section 494.001(24), F.S., defines the term “mortgage loan” to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,<sup>58</sup> or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

### *Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders*

An individual who acts as a loan originator must obtain a loan originator license.<sup>59</sup> A “loan originator means” an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.<sup>60</sup>

The term “loan originator” includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.<sup>61</sup>

A “mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker<sup>62</sup> and such persons are required to be licensed as mortgage brokers.<sup>63</sup>

A “mortgage lender” means any person making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional

<sup>57</sup> Chapter 2009-241, Laws of Fla.

<sup>58</sup> The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of “material disclosure” under s. 103(v), rather than the term “dwelling,” which is defined under s. 103(w). *See* 15 U.S.C. 1602.

<sup>59</sup> Section 494.00312, F.S.

<sup>60</sup> Section 494.001(17), F.S.

<sup>61</sup> *Id.*

<sup>62</sup> Section 494.001(22), F.S.

<sup>63</sup> Section 494.00321, F.S.

investor,<sup>64</sup> and such persons are required to be licensed as mortgage lenders.<sup>65</sup> “Making a mortgage loan” means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.<sup>66</sup> The following persons are exempt from regulation as a mortgage lender under part III of ch. 494, F.S.:

- A person acting in a fiduciary capacity conferred by the authority of a court;
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction;
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans;
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors;
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business; and
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.<sup>67</sup>

#### ***Examination Authority, Administrative Penalties and Fines***

The OFR may conduct investigations, examinations, and investigate complaints.<sup>68</sup> The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.<sup>69</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 125.01055, F.S., regarding affordable housing, to prohibit a county from adopting or imposing a requirement in any form, including, without limitation, by way of a comprehensive plan amendment, ordinance, or land development regulation or as a condition of a development order or development permit, which has any of the following effects:

- Mandating or establishing a maximum sales price or lease rental for privately produced dwelling units.
- Requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants.
- Requiring the provision of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any 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.

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<sup>64</sup> Section 494.001(23), F.S.

<sup>65</sup> Section 494.00611, F.S.

<sup>66</sup> Section 494.001(20), F.S.

<sup>67</sup> Section 494.00115(2), F.S.

<sup>68</sup> Section 494.0012, F.S.

<sup>69</sup> See s. 494.00255, F.S.

This section would effectively eliminate inclusionary housing that is currently allowed under state law.

The bill does not limit the authority of a county to create or implement a voluntary density bonus program or any other voluntary incentive-based program designed to increase the supply of workforce or affordable housing units.

**Section 2** amends s. 125.022, F.S., to require a county to review an application for a development permit or development order for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient within 30 days after receiving such application.

The bill provides that the terms “development permit” and “development order” have the same meaning as in s. 163.3164, F.S., but does not include the term “building permit.”

If deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 90 days after the initial submission, if complete, or the supplemental submission, whichever is later, the county must approve, approve with conditions, or deny the application for a development permit or development order. These time periods may be waived in writing by the applicant. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county’s decision.

**Section 3** amends s. 163.3180, F.S., to require a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not upon the impact fee for any particular type of school.

**Section 4** amends s. 163.31801, F.S., to add minimum conditions that certain impact fees must satisfy.

The bill prohibits any local government from collecting an impact fee any time prior to the date of issuance of the building permit for the property that is subject to the fee.

The bill codifies the requirement for impact fees to be proportional and reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

The bill requires the impact fee to be proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

The local government must specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt

or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

The local government must credit against the collection of the impact fee any contributions related to public educational facilities, including, but not limited to, land dedication, site planning and design, and construction, whether provided in a proportionate share agreement or any other form of exaction. Any such contributions must be applied to reduce impact fees on a dollar-for-dollar basis at fair market value.

If the holder of impact fee or mobility fee credits granted by a local government, whether granted under this section, s. 380.06, F.S.(developments of regional impact), or otherwise, uses such credits in lieu of the actual payment of an impact fee or mobility fee, and the impact fee or mobility fee is greater than the rate that was in effect when such credits were first established, the holder of those credits must, whenever they are utilized, receive the full value of the credit as of the date on which they were first established based on the impact fee or mobility fee rate that was in effect on such date.

In any action challenging the government's failure to provided required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b, F.S., (school concurrency), the government has the burden of proving preponderance of the evidence that the amount of the credit meets the requirements of state legal precedent and the provisions of this section. The bill prohibits the court from using a deferential standard for the benefit of the government.

The bill specifies that all provisions governing impact fees in s. 163.31801, F.S., also apply to mobility fees.

A county, municipality, or special district may provide an exception or waiver for the impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071, F.S., If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

**Section 5** amends s. 166.033, F.S., to require a municipality to review an application for a development permit or development order for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient within 30 days after receiving such application.

The bill provides that the terms "development permit" and "development order" have the same meaning as in s. 163.3164, F.S., but does not include the term "building permit."

If deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 90 days of the initial submission, if complete, or the supplemental submission, whichever is later, the municipality must approve, approve with conditions, or deny the application for a development permit or development order. These time periods may be waived in writing by the applicant. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the municipality's decision.

**Section 6** amends s. 166.04151, F.S., regarding affordable housing, to prohibit a municipality from adopting or imposing a requirement in any form, including, without limitation, by way of a comprehensive plan amendment, ordinance, or land development regulation or as a condition of a development order or development permit, which has any of the following effects:

- Mandating or establishing a maximum sales price or lease rental for privately produced dwelling units.
- Requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants.
- Requiring the provision of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any 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.

The bill does not limit the authority of a municipality to create or implement a voluntary density bonus program or any other voluntary incentive-based program designed to increase the supply of workforce or affordable housing units.

**Section 7** amends the definition of the term, “mortgage loan” in s. 494.001(24), F.S., by removing the requirement that residential loans be used primarily for personal, family, or household purposes. As a result, the bill allows residential loans made for a business purpose to fall under the definition of a “mortgage loan” and to be subject to regulation by the OFR. The bill may require persons originating, brokering, or lending such loans to obtain licensure under ch. 494, F.S., unless they fall within an exemption under s. 494.00115, F.S.

**Section 8** provides the bill takes effect upon becoming a law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, Section 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate. However, the mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.<sup>70,71,72</sup>

<sup>70</sup> FLA. CONST. art. VII, s. 18(d).

<sup>71</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 18, 2019).

<sup>72</sup> Based on the Florida Demographic Estimating Conference’s November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 18, 2019).

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.<sup>73</sup> In the memo, the guidelines define the term “authority” to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

While the bill does not restrict the amount counties and municipalities may charge for impact fees, it does restrict the time at which a county or municipality may collect such fees. An impact fee collected at the platting stage is theoretically worth more than an amount collected no earlier than the issuance of the building permit due to the time value of money.<sup>74</sup> It is unclear if this bill lessens the type of *authority* contemplated by President Margolis and Speaker Wetherell.

If the bill is determined to reduce the *authority* that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, s. 6 of the State Constitution provides, in relevant part, that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” In interpreting this provision, the Florida Supreme Court has stated, “[a]n act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.”<sup>75</sup>

The title of the bill is “community development and housing,” and it contains many provisions related to affordable housing, development permits, and impact fees. Section 7 of the bill amends the definition of the term “mortgage loan” in s. 494.001(24), F.S., by

<sup>73</sup> Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate and T.K. Wetherell, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Senate Committee on Community Affairs).

<sup>74</sup> Provided money can earn interest, any amount of money is worth more the sooner it is received.

<sup>75</sup> *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981).

removing the requirement that residential loans be used primarily for personal, family, or household purposes. It is unclear whether a reviewing court would conclude that this provision has a “natural or logical connection” with community development and housing.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the impact of CS/SB 1730.

**B. Private Sector Impact:**

Developers will not have to pay impact fees prior to the issuance of the building permit for a property. Developers will receive dollar-for-dollar credit at fair market value relating to their expenditures for public education facilities, land dedication, site planning and design, and construction. Also, the elimination of impact fees for affordable housing may act as an incentive for additional private sector development of various types of affordable housing.

Implementation of the bill would allow borrowers obtaining residential mortgage for business purposes (not primarily for personal, family, or household use) greater consumer protections provided under ch. 494, F.S., which requires compliance with RESPA and TILA. All residential mortgage loans regardless of the purpose would be subject to the provisions of ch. 494, F.S.

Persons making residential mortgage loans for business purposes and who are not licensed would be required to obtain licensure under ch. 494, F.S., in order to continue such lending activity.

**C. Government Sector Impact:**

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property. There may be a reduction in the amount of impact fees imposed as the bill requires local governments to provide credits to developers at a dollar-for-dollar fair market value regarding expenditures for public education facilities and associated costs. Also, local governments would be prohibited from charging impact fees for affordable housing and may need to find other revenue sources to replace any waived fees. If a local government provides an affordable housing impact fee waiver, as authorized by CS/SB 1730, it is not required to use any revenue to offset the impact.

The OFR may need additional staff to perform licensing and regulatory functions for entities that make residential mortgage loans for business purposes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but would not necessarily be required to provide the disclosures required under RESPA and TILA if the residential mortgage loan is made for business purposes.

**VIII. Statutes Affected:**

The bill substantially amends sections 125.01055, 125.022, 163.3180, 163.31801, 166.033, 166.04151, and 494.001 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Community Affairs on March 20, 2019:**

The committee substitute:

- Provides requirements for basis of impact fee credits;
- Removes provision that awards attorney fees and costs in action challenging local government failure to provide required credits for impact fees;
- Authorizes, instead of requiring, a local government to waive impact fees for development or construction of affordable housing; and
- Amends the definition of the term “mortgage loan” in s. 494.001(24), F.S.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Community Affairs (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 125.01055, Florida Statutes, is amended  
to read:

125.01055 Affordable housing.—

(1) Notwithstanding any other provision of law, a county  
may adopt and maintain in effect any law, ordinance, rule, or  
other measure that is adopted for the purpose of increasing the



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11 supply of affordable housing using land use mechanisms such as  
12 inclusionary housing ordinances. A county may not, however,  
13 adopt or impose a requirement in any form, including, without  
14 limitation, by way of a comprehensive plan amendment, ordinance,  
15 or land development regulation or as a condition of a  
16 development order or development permit, which has any of the  
17 following effects:

18 (a) Mandating or establishing a maximum sales price or  
19 lease rental for privately produced dwelling units.

20 (b) Requiring the allocation or designation, whether  
21 directly or indirectly, of privately produced dwelling units for  
22 sale or rental to any particular class or group of purchasers or  
23 tenants.

24 (c) Requiring the provision of any onsite or offsite  
25 workforce or affordable housing units or a contribution of land  
26 or money for such housing, including, but not limited to, the  
27 payment of any flat or percentage-based fee, whether calculated  
28 on the basis of the number of approved dwelling units, the  
29 amount of approved square footage, or otherwise.

30 (2) This section does not limit the authority of a county  
31 to create or implement a voluntary density bonus program or any  
32 other voluntary incentive-based program designed to increase the  
33 supply of workforce or affordable housing units.

34 Section 2. Section 125.022, Florida Statutes, is amended to  
35 read:

36 125.022 Development permits and orders.—

37 (1) Within 30 days after receiving an application for a  
38 development permit or development order, a county must review  
39 the application for completeness and issue a letter indicating



40 that all required information is submitted or specifying with  
41 particularity any areas that are deficient. If deficient, the  
42 applicant has 30 days to address the deficiencies by submitting  
43 the required additional information. Within 90 days after the  
44 initial submission, if complete, or the supplemental submission,  
45 whichever is later, the county shall approve, approve with  
46 conditions, or deny the application for a development permit or  
47 development order. The time periods contained in this section  
48 may be waived in writing by the applicant. An approval, approval  
49 with conditions, or denial of the application for a development  
50 permit or development order must include written findings  
51 supporting the county's decision.

52 (2)~~(1)~~ When reviewing an application for a development  
53 permit or development order that is certified by a professional  
54 listed in s. 403.0877, a county may not request additional  
55 information from the applicant more than three times, unless the  
56 applicant waives the limitation in writing. Before a third  
57 request for additional information, the applicant must be  
58 offered a meeting to attempt to resolve outstanding issues.  
59 Except as provided in subsection (5)~~(4)~~, if the applicant  
60 believes the request for additional information is not  
61 authorized by ordinance, rule, statute, or other legal  
62 authority, the county, at the applicant's request, shall proceed  
63 to process the application for approval or denial.

64 (3)~~(2)~~ When a county denies an application for a  
65 development permit or development order, the county shall give  
66 written notice to the applicant. The notice must include a  
67 citation to the applicable portions of an ordinance, rule,  
68 statute, or other legal authority for the denial of the permit



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69 or order.

70 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
71 permit" and "development order" have ~~has~~ the same meaning as in  
72 s. 163.3164, but do ~~does~~ not include building permits.

73 (5)~~(4)~~ For any development permit application filed with  
74 the county after July 1, 2012, a county may not require as a  
75 condition of processing or issuing a development permit or  
76 development order that an applicant obtain a permit or approval  
77 from any state or federal agency unless the agency has issued a  
78 final agency action that denies the federal or state permit  
79 before the county action on the local development permit.

80 (6)~~(5)~~ Issuance of a development permit or development  
81 order by a county does not in any way create any rights on the  
82 part of the applicant to obtain a permit from a state or federal  
83 agency and does not create any liability on the part of the  
84 county for issuance of the permit if the applicant fails to  
85 obtain requisite approvals or fulfill the obligations imposed by  
86 a state or federal agency or undertakes actions that result in a  
87 violation of state or federal law. A county shall attach such a  
88 disclaimer to the issuance of a development permit and shall  
89 include a permit condition that all other applicable state or  
90 federal permits be obtained before commencement of the  
91 development.

92 (7)~~(6)~~ This section does not prohibit a county from  
93 providing information to an applicant regarding what other state  
94 or federal permits may apply.

95 Section 3. Paragraph (h) of subsection (6) of section  
96 163.3180, Florida Statutes, is amended to read:

97 163.3180 Concurrency.—



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98 (6)

99 (h)1. In order to limit the liability of local governments,  
100 a local government may allow a landowner to proceed with  
101 development of a specific parcel of land notwithstanding a  
102 failure of the development to satisfy school concurrency, if all  
103 the following factors are shown to exist:

104 a. The proposed development would be consistent with the  
105 future land use designation for the specific property and with  
106 pertinent portions of the adopted local plan, as determined by  
107 the local government.

108 b. The local government's capital improvements element and  
109 the school board's educational facilities plan provide for  
110 school facilities adequate to serve the proposed development,  
111 and the local government or school board has not implemented  
112 that element or the project includes a plan that demonstrates  
113 that the capital facilities needed as a result of the project  
114 can be reasonably provided.

115 c. The local government and school board have provided a  
116 means by which the landowner will be assessed a proportionate  
117 share of the cost of providing the school facilities necessary  
118 to serve the proposed development.

119 2. If a local government applies school concurrency, it may  
120 not deny an application for site plan, final subdivision  
121 approval, or the functional equivalent for a development or  
122 phase of a development authorizing residential development for  
123 failure to achieve and maintain the level-of-service standard  
124 for public school capacity in a local school concurrency  
125 management system where adequate school facilities will be in  
126 place or under actual construction within 3 years after the



127 issuance of final subdivision or site plan approval, or the  
128 functional equivalent. School concurrency is satisfied if the  
129 developer executes a legally binding commitment to provide  
130 mitigation proportionate to the demand for public school  
131 facilities to be created by actual development of the property,  
132 including, but not limited to, the options described in sub-  
133 subparagraph a. Options for proportionate-share mitigation of  
134 impacts on public school facilities must be established in the  
135 comprehensive plan and the interlocal agreement pursuant to s.  
136 163.31777.

137       a. Appropriate mitigation options include the contribution  
138 of land; the construction, expansion, or payment for land  
139 acquisition or construction of a public school facility; the  
140 construction of a charter school that complies with the  
141 requirements of s. 1002.33(18); or the creation of mitigation  
142 banking based on the construction of a public school facility in  
143 exchange for the right to sell capacity credits. Such options  
144 must include execution by the applicant and the local government  
145 of a development agreement that constitutes a legally binding  
146 commitment to pay proportionate-share mitigation for the  
147 additional residential units approved by the local government in  
148 a development order and actually developed on the property,  
149 taking into account residential density allowed on the property  
150 prior to the plan amendment that increased the overall  
151 residential density. The district school board must be a party  
152 to such an agreement. As a condition of its entry into such a  
153 development agreement, the local government may require the  
154 landowner to agree to continuing renewal of the agreement upon  
155 its expiration.



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156           b. If the interlocal agreement and the local government  
157 comprehensive plan authorize a contribution of land; the  
158 construction, expansion, or payment for land acquisition; the  
159 construction or expansion of a public school facility, or a  
160 portion thereof; or the construction of a charter school that  
161 complies with the requirements of s. 1002.33(18), as  
162 proportionate-share mitigation, the local government shall  
163 credit such a contribution, construction, expansion, or payment  
164 toward any other impact fee or exaction imposed by local  
165 ordinance for public educational facilities ~~the same need~~, on a  
166 dollar-for-dollar basis at fair market value. The credit must be  
167 based on the total impact fee assessed and not upon the impact  
168 fee for any particular type of school.

169           c. Any proportionate-share mitigation must be directed by  
170 the school board toward a school capacity improvement identified  
171 in the 5-year school board educational facilities plan that  
172 satisfies the demands created by the development in accordance  
173 with a binding developer's agreement.

174           3. This paragraph does not limit the authority of a local  
175 government to deny a development permit or its functional  
176 equivalent pursuant to its home rule regulatory powers, except  
177 as provided in this part.

178           Section 4. Section 163.31801, Florida Statutes, is amended  
179 to read:

180           163.31801 Impact fees; short title; intent; minimum  
181 requirements; audits; challenges ~~definitions; ordinances levying~~  
182 ~~impact fees.~~

183           (1) This section may be cited as the "Florida Impact Fee  
184 Act."



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185 (2) The Legislature finds that impact fees are an important  
186 source of revenue for a local government to use in funding the  
187 infrastructure necessitated by new growth. The Legislature  
188 further finds that impact fees are an outgrowth of the home rule  
189 power of a local government to provide certain services within  
190 its jurisdiction. Due to the growth of impact fee collections  
191 and local governments' reliance on impact fees, it is the intent  
192 of the Legislature to ensure that, when a county or municipality  
193 adopts an impact fee by ordinance or a special district adopts  
194 an impact fee by resolution, the governing authority complies  
195 with this section.

196 (3) At a minimum, an impact fee adopted by ordinance of a  
197 county or municipality or by resolution of a special district  
198 must satisfy all of the following conditions, ~~at minimum~~:

199 (a) ~~Require that~~ The calculation of the impact fee must be  
200 based on the most recent and localized data.

201 (b) The local government must provide for accounting and  
202 reporting of impact fee collections and expenditures. If a local  
203 governmental entity imposes an impact fee to address its  
204 infrastructure needs, the entity must ~~shall~~ account for the  
205 revenues and expenditures of such impact fee in a separate  
206 accounting fund.

207 (c) ~~Limit~~ Administrative charges for the collection of  
208 impact fees must be limited to actual costs.

209 (d) The local government must provide ~~Require that~~ notice  
210 not be provided ~~no~~ less than 90 days before the effective date  
211 of an ordinance or resolution imposing a new or increased impact  
212 fee. A county or municipality is not required to wait 90 days to  
213 decrease, suspend, or eliminate an impact fee.



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214       (e) Collection of the impact fee may not be required to  
215 occur earlier than the date of issuance of the building permit  
216 for the property that is subject to the fee.

217       (f) The impact fee must be proportional and reasonably  
218 connected to, or have a rational nexus with, the need for  
219 additional capital facilities and the increased impact generated  
220 by the new residential or commercial construction.

221       (g) The impact fee must be proportional and reasonably  
222 connected to, or have a rational nexus with, the expenditures of  
223 the funds collected and the benefits accruing to the new  
224 residential or nonresidential construction.

225       (h) The local government must specifically earmark funds  
226 collected under the impact fee for use in acquiring,  
227 constructing, or improving capital facilities to benefit new  
228 users.

229       (i) Revenues generated by the impact fee may not be used,  
230 in whole or in part, to pay existing debt or for previously  
231 approved projects unless the expenditure is reasonably connected  
232 to, or has a rational nexus with, the increased impact generated  
233 by the new residential or nonresidential construction.

234       (j) The local government must credit against the collection  
235 of the impact fee any contributions related to public  
236 educational facilities, including, but not limited to, land  
237 dedication, site planning and design, and construction, whether  
238 provided in a proportionate share agreement or any other form of  
239 exaction. Any such contributions must be applied to reduce  
240 impact fees on a dollar-for-dollar basis at fair market value.

241       (4) If the holder of impact fee or mobility fee credits  
242 granted by a local government, whether granted under this



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243 section, s. 380.06, or otherwise, uses such credits in lieu of  
244 the actual payment of an impact fee or mobility fee and the  
245 impact fee or mobility fee is greater than the rate that was in  
246 effect when such credits were first established, the holder of  
247 those credits must, whenever they are utilized, receive the full  
248 value of the credits as of the date on which they were first  
249 established based on the impact fee or mobility fee rate that  
250 was in effect on such date.

251 (5)~~(4)~~ Audits of financial statements of local governmental  
252 entities and district school boards which are performed by a  
253 certified public accountant pursuant to s. 218.39 and submitted  
254 to the Auditor General must include an affidavit signed by the  
255 chief financial officer of the local governmental entity or  
256 district school board stating that the local governmental entity  
257 or district school board has complied with this section.

258 (6)~~(5)~~ In any action challenging an impact fee or the  
259 government's failure to provide required dollar-for-dollar  
260 credits for the payment of impact fees as provided in s.  
261 163.3180(6)(h)2.b, the government has the burden of proving by a  
262 preponderance of the evidence that the imposition or amount of  
263 the fee or credit meets the requirements of state legal  
264 precedent ~~or~~ and this section. The court may not use a  
265 deferential standard for the benefit of the government.

266 (7) This section applies to mobility fees adopted pursuant  
267 to s. 163.3180(5)(i).

268 (8) A county, municipality, or special district may provide  
269 an exception or waiver for an impact fee for the development or  
270 construction of housing that is affordable, as defined in s.  
271 420.9071. If a county, municipality, or special district



272 provides such an exception or waiver, it is not required to use  
273 any revenues to offset the impact.

274 Section 5. Section 166.033, Florida Statutes, is amended to  
275 read:

276 166.033 Development permits and orders.-

277 (1) Within 30 days after receiving an application for  
278 approval of a development permit or development order, a  
279 municipality must review the application for completeness and  
280 issue a letter indicating that all required information is  
281 submitted or specifying with particularity any areas that are  
282 deficient. If deficient, the applicant has 30 days to address  
283 the deficiencies by submitting the required additional  
284 information. Within 90 days of the initial submission, if  
285 complete, or the supplemental submission, whichever is later,  
286 the municipality must approve, approve with conditions, or deny  
287 the application for a development permit or development order.  
288 The time periods contained in this subsection may be waived in  
289 writing by the applicant. An approval, approval with conditions,  
290 or denial of the application for a development permit or  
291 development order must include written findings supporting the  
292 county's decision.

293 (2)~~(1)~~ When reviewing an application for a development  
294 permit or development order that is certified by a professional  
295 listed in s. 403.0877, a municipality may not request additional  
296 information from the applicant more than three times, unless the  
297 applicant waives the limitation in writing. Before a third  
298 request for additional information, the applicant must be  
299 offered a meeting to attempt to resolve outstanding issues.  
300 Except as provided in subsection (5)~~(4)~~, if the applicant



301 believes the request for additional information is not  
302 authorized by ordinance, rule, statute, or other legal  
303 authority, the municipality, at the applicant's request, shall  
304 proceed to process the application for approval or denial.

305 ~~(3)~~(2) When a municipality denies an application for a  
306 development permit or development order, the municipality shall  
307 give written notice to the applicant. The notice must include a  
308 citation to the applicable portions of an ordinance, rule,  
309 statute, or other legal authority for the denial of the permit  
310 or order.

311 ~~(4)~~(3) As used in this section, the terms ~~term~~ "development  
312 permit" and "development order" have ~~has~~ the same meaning as in  
313 s. 163.3164, but do ~~does~~ not include building permits.

314 ~~(5)~~(4) For any development permit application filed with  
315 the municipality after July 1, 2012, a municipality may not  
316 require as a condition of processing or issuing a development  
317 permit or development order that an applicant obtain a permit or  
318 approval from any state or federal agency unless the agency has  
319 issued a final agency action that denies the federal or state  
320 permit before the municipal action on the local development  
321 permit.

322 ~~(6)~~(5) Issuance of a development permit or development  
323 order by a municipality does not ~~in any way~~ create any right on  
324 the part of an applicant to obtain a permit from a state or  
325 federal agency and does not create any liability on the part of  
326 the municipality for issuance of the permit if the applicant  
327 fails to obtain requisite approvals or fulfill the obligations  
328 imposed by a state or federal agency or undertakes actions that  
329 result in a violation of state or federal law. A municipality



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330 shall attach such a disclaimer to the issuance of development  
331 permits and shall include a permit condition that all other  
332 applicable state or federal permits be obtained before  
333 commencement of the development.

334 (7)~~(6)~~ This section does not prohibit a municipality from  
335 providing information to an applicant regarding what other state  
336 or federal permits may apply.

337 Section 6. Section 166.04151, Florida Statutes, is amended  
338 to read:

339 166.04151 Affordable housing.—

340 (1) Notwithstanding any other provision of law, a  
341 municipality may adopt and maintain in effect any law,  
342 ordinance, rule, or other measure that is adopted for the  
343 purpose of increasing the supply of affordable housing using  
344 land use mechanisms such as inclusionary housing ordinances. A  
345 municipality may not, however, adopt or impose a requirement in  
346 any form, including, without limitation, by way of a  
347 comprehensive plan amendment, ordinance, or land development  
348 regulation or as a condition of a development order or  
349 development permit, which has any of the following effects:

350 (a) Mandating or establishing a maximum sales price or  
351 lease rental for privately produced dwelling units.

352 (b) Requiring the allocation or designation, whether  
353 directly or indirectly, of privately produced dwelling units for  
354 sale or rental to any particular class or group of purchasers or  
355 tenants.

356 (c) Requiring the provision of any on-site or off-site  
357 workforce or affordable housing units or a contribution of land  
358 or money for such housing, including, but not limited to, the



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359 payment of any flat or percentage-based fee whether calculated  
360 on the basis of the number of approved dwelling units, the  
361 amount of approved square footage, or otherwise.

362 (2) This section does not limit the authority of a  
363 municipality to create or implement a voluntary density bonus  
364 program or any other voluntary incentive-based program designed  
365 to increase the supply of workforce or affordable housing units.

366 Section 7. Subsection (24) of section 494.001, Florida  
367 Statutes, is amended to read:

368 494.001 Definitions.—As used in this chapter, the term:

369 (24) "Mortgage loan" means any:

370 (a) Residential loan ~~that primarily for personal, family,~~  
371 ~~or household use which~~ is secured by a mortgage, deed of trust,  
372 or other equivalent consensual security interest on a dwelling,  
373 as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in  
374 Lending Act, or for the purchase of residential real estate upon  
375 which a dwelling is to be constructed;

376 (b) Loan on commercial real property if the borrower is an  
377 individual or the lender is a noninstitutional investor; or

378 (c) Loan on improved real property consisting of five or  
379 more dwelling units if the borrower is an individual or the  
380 lender is a noninstitutional investor.

381 Section 8. This act shall take effect upon becoming a law.

382  
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete everything before the enacting clause  
386 and insert:

387 A bill to be entitled



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388 An act relating to community development and housing;  
389 amending s. 125.01055, F.S.; prohibiting a county from  
390 adopting or imposing a requirement in any form  
391 relating to affordable housing which has specified  
392 effects; providing construction; amending s. 125.022,  
393 F.S.; requiring that a county review the application  
394 for completeness and issue a certain letter within a  
395 specified period after receiving an application for  
396 approval of a development permit or development order;  
397 providing procedures for addressing deficiencies in,  
398 and for approving or denying, the application;  
399 conforming provisions to changes made by the act;  
400 defining the term "development order"; amending s.  
401 163.3180, F.S.; requiring a local government to credit  
402 certain contributions, constructions, expansions, or  
403 payments toward any other impact fee or exaction  
404 imposed by local ordinance for public educational  
405 facilities; providing requirements for the basis of  
406 the credit; amending s. 163.31801, F.S.; adding  
407 minimum conditions that certain impact fees must  
408 satisfy; requiring that, under certain circumstances,  
409 a holder of certain impact fee or mobility fee credits  
410 receive the full value of the credits as of the date  
411 they were first established based on the impact fee or  
412 mobility fee rate that was in effect on such date;  
413 providing that the government, in certain actions, has  
414 the burden of proving by a preponderance of the  
415 evidence that the imposition or amount of impact fees  
416 or required dollar-for-dollar credits for the payment



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417 of impact fees meets certain requirements; prohibiting  
418 the court from using a deferential standard for the  
419 benefit of the government; providing applicability;  
420 authorizing a county, municipality, or special  
421 district to provide an exception or waiver for an  
422 impact fee for the development or construction of  
423 housing that is affordable; providing that if a  
424 county, municipality, or special district provides  
425 such an exception or waiver, it is not required to use  
426 any revenues to offset the impact; amending s.  
427 166.033, F.S.; requiring that a municipality review  
428 the application for completeness and issue a certain  
429 letter within a specified period after receiving an  
430 application for approval of a development permit or  
431 development order; providing procedures for addressing  
432 deficiencies in, and for approving or denying, the  
433 application; conforming provisions to changes made by  
434 the act; defining the term "development order";  
435 amending s. 166.04151, F.S.; prohibiting a  
436 municipality from adopting or imposing a requirement  
437 in any form relating to affordable housing which has  
438 specified effects; providing construction; amending s.  
439 494.001, F.S.; revising the definition of the term  
440 "mortgage loan"; providing an effective date.

# THE FLORIDA LEGISLATURE

OFFICE OF THE  
PRESIDENT



OFFICE OF THE  
SPEAKER



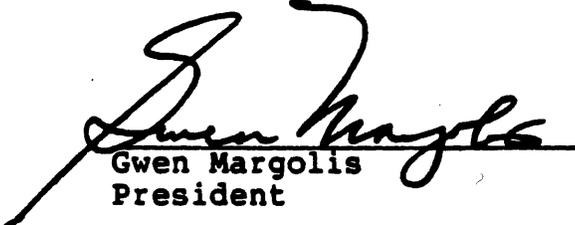
March 21, 1991

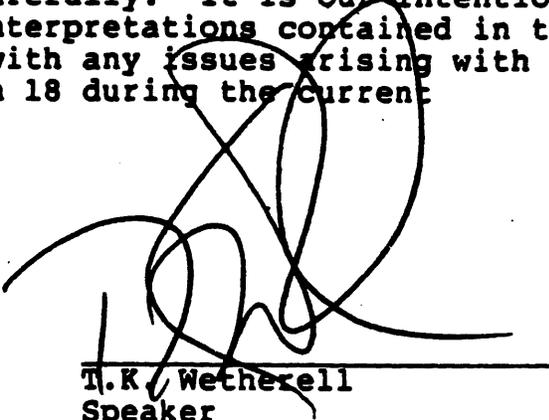
Members of The Florida House  
and The Florida Senate  
The Capitol  
Tallahassee, Florida

Dear Members:

Last fall the voters approved a constitutional amendment concerning the imposition of mandates on municipalities and counties. These provisions are now contained in Article VII, Section 18 of the Florida Constitution. Staff of the House and Senate have been working together over the past few weeks to recommend a set of guidelines for interpreting the new constitutional provisions. These guidelines are attached. Please read them carefully. It is our intention that both houses follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18 during the current session.

Sincerely,

  
Gwen Margolis  
President

  
T.K. Wetherell  
Speaker

March 7, 1991

## COUNTY AND MUNICIPALITY MANDATES ANALYSIS

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provision relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

### OVERVIEW:

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

### GENERAL CONSIDERATIONS:

- \* In analyzing a bill or amendment to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.
- \* The mandates analysis applies only to general laws and not to special laws (local bills).
- \* The requirements of Article VII, Section 18 apply only to cities and counties.

## **CRITERIA:**

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

A. A law requiring cities or counties to spend funds or to take action requiring expenditure.

B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases in such authority.

2. The term "authority" applies to:

- a) the power to levy a tax;
- b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
- c) the tax rate which can be levied; and
- d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.

## **EXEMPTIONS:**

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991 --**  
This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.
  
2. **Criminal law -- This applies to any bill relating to the following:**
  - \* Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.
  - \* Relating to the processes of arrest and pretrial detention.
  - \* Relating to defense and prosecution.
  - \* Relating to adjudication, sentencing, and implementation of criminal sanctions.
  
3. **Election Laws -- Generally, this applies to any bill relating to the required processes and procedures of holding public elections.**
  
4. **The General Appropriations Act**
  
5. **Special Appropriations Acts**
  
6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority --** Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.

7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

#### **EXCEPTIONS:**

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

- A. **General bills requiring cities and counties to spend funds or to take action requiring expenditure.**

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting

appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

**1. The Legislature Determines That It Fulfills an Important State Interest:**

This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

**2. Condition #1 must be met and any one of the following exceptions:**

- a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

- b. The Legislature authorizes or has authorized a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

- c. The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are treated similarly, even though the group may only contain governmental entities or even only local governmental entities.

The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

- d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

**If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.**

**If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest and the bill must pass by a 2/3 vote to effectively bind cities and counties.**

**B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.**

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

**C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.**

**The exceptions by which this criterion does not apply are:**

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.
2. During a fiscal emergency; or
3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

**If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/19

Bill Number (if applicable) SB 1730

Topic SB 1730 - IMPACT Fee

Amendment Barcode (if applicable)

Name ROBERT BRYAN

Job Title Village Attorney

Address 15140 MORRIS, VILLAGE OF ISLANDS

Phone 305 266 4-6418

Street 28800 Overseas Hwy City ISLANDS State FL Zip 33036

Email

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ISLANDS, VILLAGE OF ISLANDS

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/20/19

Meeting Date

1230

Bill Number (if applicable)

Topic

Grant Management - Affordable Housing

Amendment Barcode (if applicable)

Name

Roberta Velazquez

Job Title

Legislative Affairs Director

Address

300 N Olive Ave  
West Palm Beach FL 33401

Phone

888-281-2335

Email

rdelavos@pbf.org

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

West Palm Beach County

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/14

Bill Number (if applicable) 1730

Topic Growth Management

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title \_\_\_\_\_

Address 113 E. College Ave Ste 200

Phone 850 566 7824

Street TCM

Email kari@wlsing.net

City \_\_\_\_\_ State \_\_\_\_\_ Zip 32301

Speaking:  For  Against  Information  In Support  Against  
(The Chair will read this information into the record.)

Representing FL HOME BUILDERS ASSOC

Appearing at request of Chair:  Yes  No  Yes  No  
Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/19

Bill Number (if applicable) SB 1730

Topic SB 1730

Amendment Barcode (if applicable)

Name Amanda Gill

Job Title Government Affairs Director

Address 105 E. Robinson St.

Phone 248-894-8523

Street Orlando State FL Zip 32801

Email amanda@fahq.org

Speaking:  For  Against  Information  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Apartment Association

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

Duplicate

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3/20/19

SB 1730

Meeting Date

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N. Adams St

Phone 224-7173

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**APPEARANCE RECORD**

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Meeting Date 3/20/19

Bill Number (if applicable) 1730

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300

Phone 222-7500

Street Tallahassee State FL Zip 32301

Email garyh@hgs-law.com

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Association of Florida Community Developers / Florida Chamber

Appearing at request of Chair:  Yes  No  Lobbyist registered with Legislature:  Yes  No

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3/25/2019  
Meeting Date

1730  
Bill Number (if applicable)

Topic Growth Message

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislator Advocate

Address

Phone 701-3701

Street Tallahassee FL 32302  
City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date 3/20/19

Bill Number (if applicable) 1730

Topic Growth Management

Amendment Barcode (if applicable)

Name Eric Boyd

Job Title Eq.

Address 100 Morse

Phone 922 4300

Street Tell City FL State FL Zip

Email speake@flcourts

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Assoc. Courts

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**APPEARANCE RECORD**

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3/20/19  
Meeting Date

1730  
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.

Phone 850-933-5554

Street Tallahassee City FL State 32301 Zip

Email edward@rsccorville.com

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Highland Homes

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/14/14)

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Meeting Date 8-20-19

Bill Number (if applicable) SB 1730

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Growth Management

Name PAZ FEBRER

Job Title \_\_\_\_\_

Address 119 EAST WILFORD AVE

City PLANT CREEK State FL Zip 32301

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  (The Chair will read this information into the record.)

Representing FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

March 20, 2018

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SB 1730

Meeting Date

Bill Number (if applicable)

Topic Environment Management

Amendment Barcode (if applicable)

Name Thomas Hawkins

Job Title Policy & Planning Director

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Street Tallahassee State FL Zip 32301

Email thawkins@1000Fed.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing 1000 Friends of Florida

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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By Senator Lee

20-01705A-19

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1 A bill to be entitled  
 2 An act relating to growth management; amending s.  
 3 125.01055, F.S.; prohibiting a county from adopting or  
 4 imposing a requirement in any form relating to  
 5 affordable housing which has specified effects;  
 6 providing construction; amending s. 125.022, F.S.;  
 7 requiring that a county review the application for  
 8 completeness and issue a certain letter within a  
 9 specified period after receiving an application for  
 10 approval of a development permit or development order;  
 11 providing procedures for addressing deficiencies in,  
 12 and for approving or denying, the application;  
 13 conforming provisions to changes made by the act;  
 14 defining the term "development order"; amending s.  
 15 163.3180, F.S.; requiring a local government to credit  
 16 certain contributions, constructions, expansions, or  
 17 payments toward any other impact fee or exaction  
 18 imposed by local ordinance for public educational  
 19 facilities; providing requirements for the basis of  
 20 the credit; amending s. 163.31801, F.S.; adding  
 21 minimum conditions that certain impact fees must  
 22 satisfy; requiring that, under certain circumstances,  
 23 a holder of certain impact fee or mobility fee credits  
 24 receive the full value of the credit as of the date it  
 25 was first established based on the impact fee or  
 26 mobility fee rate that was in effect on such date;  
 27 providing that the government, in certain actions, has  
 28 the burden of proving by a preponderance of the  
 29 evidence that the imposition or amount of impact fees

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30 or required dollar-for-dollar credits for the payment  
 31 of impact fees meets certain requirements; prohibiting  
 32 the court from using a deferential standard for the  
 33 benefit of the government; authorizing the court to  
 34 award attorney fees and costs to the prevailing party  
 35 in any action challenging an impact fee; requiring  
 36 that the court award attorney fees and costs to a  
 37 prevailing property owner if the court makes specified  
 38 determinations regarding the impact fee; providing  
 39 applicability; prohibiting a local government from  
 40 imposing concurrency mitigation conditions of any kind  
 41 on a project if the government does not provide  
 42 certain required credits; prohibiting a local  
 43 government, beginning on a specified date, from  
 44 charging an impact fee for the development or  
 45 construction of housing that is affordable; amending  
 46 s. 166.033, F.S.; requiring that a municipality review  
 47 the application for completeness and issue a certain  
 48 letter within a specified period after receiving an  
 49 application for approval of a development permit or  
 50 development order; providing procedures for addressing  
 51 deficiencies in, and for approving or denying, the  
 52 application; conforming provisions to changes made by  
 53 the act; defining the term "development order";  
 54 amending s. 166.04151, F.S.; prohibiting a  
 55 municipality from adopting or imposing a requirement  
 56 in any form relating to affordable housing which has  
 57 specified effects; providing construction; providing  
 58 an effective date.

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

60 Section 1. Section 125.01055, Florida Statutes, is amended  
61 to read:

62 125.01055 Affordable housing.-

63 (1) Notwithstanding any other provision of law, a county  
64 may adopt and maintain in effect any law, ordinance, rule, or  
65 other measure that is adopted for the purpose of increasing the  
66 supply of affordable housing using land use mechanisms such as  
67 inclusionary housing ordinances. A county may not, however,  
68 adopt or impose a requirement in any form, including, without  
69 limitation, by way of a comprehensive plan amendment, ordinance,  
70 or land development regulation or as a condition of a  
71 development order or development permit, which has any of the  
72 following effects:

73 (a) Mandating or establishing a maximum sales price or  
74 lease rental for privately produced dwelling units.

75 (b) Requiring the allocation or designation, whether  
76 directly or indirectly, of privately produced dwelling units for  
77 sale or rental to any particular class or group of purchasers or  
78 tenants.

79 (c) Requiring the provision of any on-site or off-site  
80 workforce or affordable housing units or a contribution of land  
81 or money for such housing, including, but not limited to, the  
82 payment of any flat or percentage-based fee, whether calculated  
83 on the basis of the number of approved dwelling units, the  
84 amount of approved square footage, or otherwise.

85 (2) This section does not limit the authority of a county  
86  
87

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88 to create or implement a voluntary density bonus program or any  
89 other voluntary incentive-based program designed to increase the  
90 supply of workforce or affordable housing units.

91 Section 2. Section 125.022, Florida Statutes, is amended to  
92 read:

93 125.022 Development permits and orders.-

94 (1) Within 30 days after receiving an application for a  
95 development permit or development order, a county must review  
96 the application for completeness and issue a letter indicating  
97 that all required information is submitted or specifying with  
98 particularity any areas that are deficient. If deficient, the  
99 applicant has 30 days to address the deficiencies by submitting  
100 the required additional information. Within 90 days after the  
101 initial submission, if complete, or the supplemental submission,  
102 whichever is later, the county shall approve, approve with  
103 conditions, or deny the application for a development permit or  
104 development order. The time periods contained in this section  
105 may be waived in writing by the applicant. An approval, approval  
106 with conditions, or denial of the application for a development  
107 permit or development order must include written findings  
108 supporting the county's decision.

109 (2)-(4) When reviewing an application for a development  
110 permit or development order that is certified by a professional  
111 listed in s. 403.0877, a county may not request additional  
112 information from the applicant more than three times, unless the  
113 applicant waives the limitation in writing. Before a third  
114 request for additional information, the applicant must be  
115 offered a meeting to attempt to resolve outstanding issues.  
116 Except as provided in subsection (5)-(4), if the applicant

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117 believes the request for additional information is not  
 118 authorized by ordinance, rule, statute, or other legal  
 119 authority, the county, at the applicant's request, shall proceed  
 120 to process the application for approval or denial.

121 ~~(3)(2)~~ When a county denies an application for a  
 122 development permit or development order, the county shall give  
 123 written notice to the applicant. The notice must include a  
 124 citation to the applicable portions of an ordinance, rule,  
 125 statute, or other legal authority for the denial of the permit  
 126 or order.

127 ~~(4)(3)~~ As used in this section, the terms term "development  
 128 permit" and "development order" have ~~has~~ the same meaning as in  
 129 s. 163.3164, but do ~~does~~ not include building permits.

130 ~~(5)(4)~~ For any development permit application filed with  
 131 the county after July 1, 2012, a county may not require as a  
 132 condition of processing or issuing a development permit or  
 133 development order that an applicant obtain a permit or approval  
 134 from any state or federal agency unless the agency has issued a  
 135 final agency action that denies the federal or state permit  
 136 before the county action on the local development permit.

137 ~~(6)(5)~~ Issuance of a development permit or development  
 138 order by a county does not in any way create any rights on the  
 139 part of the applicant to obtain a permit from a state or federal  
 140 agency and does not create any liability on the part of the  
 141 county for issuance of the permit if the applicant fails to  
 142 obtain requisite approvals or fulfill the obligations imposed by  
 143 a state or federal agency or undertakes actions that result in a  
 144 violation of state or federal law. A county shall attach such a  
 145 disclaimer to the issuance of a development permit and shall

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146 include a permit condition that all other applicable state or  
 147 federal permits be obtained before commencement of the  
 148 development.

149 ~~(7)(6)~~ This section does not prohibit a county from  
 150 providing information to an applicant regarding what other state  
 151 or federal permits may apply.

152 Section 3. Paragraph (h) of subsection (6) of section  
 153 163.3180, Florida Statutes, is amended to read:

154 163.3180 Concurrency.—

155 (6)

156 (h)1. In order to limit the liability of local governments,  
 157 a local government may allow a landowner to proceed with  
 158 development of a specific parcel of land notwithstanding a  
 159 failure of the development to satisfy school concurrency, if all  
 160 the following factors are shown to exist:

161 a. The proposed development would be consistent with the  
 162 future land use designation for the specific property and with  
 163 pertinent portions of the adopted local plan, as determined by  
 164 the local government.

165 b. The local government's capital improvements element and  
 166 the school board's educational facilities plan provide for  
 167 school facilities adequate to serve the proposed development,  
 168 and the local government or school board has not implemented  
 169 that element or the project includes a plan that demonstrates  
 170 that the capital facilities needed as a result of the project  
 171 can be reasonably provided.

172 c. The local government and school board have provided a  
 173 means by which the landowner will be assessed a proportionate  
 174 share of the cost of providing the school facilities necessary

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175 to serve the proposed development.

176 2. If a local government applies school concurrency, it may  
 177 not deny an application for site plan, final subdivision  
 178 approval, or the functional equivalent for a development or  
 179 phase of a development authorizing residential development for  
 180 failure to achieve and maintain the level-of-service standard  
 181 for public school capacity in a local school concurrency  
 182 management system where adequate school facilities will be in  
 183 place or under actual construction within 3 years after the  
 184 issuance of final subdivision or site plan approval, or the  
 185 functional equivalent. School concurrency is satisfied if the  
 186 developer executes a legally binding commitment to provide  
 187 mitigation proportionate to the demand for public school  
 188 facilities to be created by actual development of the property,  
 189 including, but not limited to, the options described in sub-  
 190 subparagraph a. Options for proportionate-share mitigation of  
 191 impacts on public school facilities must be established in the  
 192 comprehensive plan and the interlocal agreement pursuant to s.  
 193 163.31777.

194 a. Appropriate mitigation options include the contribution  
 195 of land; the construction, expansion, or payment for land  
 196 acquisition or construction of a public school facility; the  
 197 construction of a charter school that complies with the  
 198 requirements of s. 1002.33(18); or the creation of mitigation  
 199 banking based on the construction of a public school facility in  
 200 exchange for the right to sell capacity credits. Such options  
 201 must include execution by the applicant and the local government  
 202 of a development agreement that constitutes a legally binding  
 203 commitment to pay proportionate-share mitigation for the

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204 additional residential units approved by the local government in  
 205 a development order and actually developed on the property,  
 206 taking into account residential density allowed on the property  
 207 prior to the plan amendment that increased the overall  
 208 residential density. The district school board must be a party  
 209 to such an agreement. As a condition of its entry into such a  
 210 development agreement, the local government may require the  
 211 landowner to agree to continuing renewal of the agreement upon  
 212 its expiration.

213 b. If the interlocal agreement and the local government  
 214 comprehensive plan authorize a contribution of land; the  
 215 construction, expansion, or payment for land acquisition; the  
 216 construction or expansion of a public school facility, or a  
 217 portion thereof; or the construction of a charter school that  
 218 complies with the requirements of s. 1002.33(18), as  
 219 proportionate-share mitigation, the local government shall  
 220 credit such a contribution, construction, expansion, or payment  
 221 toward any other impact fee or exaction imposed by local  
 222 ordinance for public educational facilities ~~the same need~~, on a  
 223 dollar-for-dollar basis at fair market value. The credit must be  
 224 based on the total impact fee assessed and not upon the impact  
 225 fee for any particular type of school.

226 c. Any proportionate-share mitigation must be directed by  
 227 the school board toward a school capacity improvement identified  
 228 in the 5-year school board educational facilities plan that  
 229 satisfies the demands created by the development in accordance  
 230 with a binding developer's agreement.

231 3. This paragraph does not limit the authority of a local  
 232 government to deny a development permit or its functional

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233 equivalent pursuant to its home rule regulatory powers, except  
 234 as provided in this part.

235 Section 4. Section 163.31801, Florida Statutes, is amended  
 236 to read:

237 163.31801 Impact fees; short title; intent; minimum  
 238 requirements; audits; challenges definitions; ordinances levying  
 239 impact fees.-

240 (1) This section may be cited as the "Florida Impact Fee  
 241 Act."

242 (2) The Legislature finds that impact fees are an important  
 243 source of revenue for a local government to use in funding the  
 244 infrastructure necessitated by new growth. The Legislature  
 245 further finds that impact fees are an outgrowth of the home rule  
 246 power of a local government to provide certain services within  
 247 its jurisdiction. Due to the growth of impact fee collections  
 248 and local governments' reliance on impact fees, it is the intent  
 249 of the Legislature to ensure that, when a county or municipality  
 250 adopts an impact fee by ordinance or a special district adopts  
 251 an impact fee by resolution, the governing authority complies  
 252 with this section.

253 (3) At a minimum, an impact fee adopted by ordinance of a  
 254 county or municipality or by resolution of a special district  
 255 must satisfy all of the following conditions, at minimum:

256 (a) ~~Require that~~ The calculation of the impact fee must be  
 257 based on the most recent and localized data.

258 (b) The local government must provide for accounting and  
 259 reporting of impact fee collections and expenditures. If a local  
 260 governmental entity imposes an impact fee to address its  
 261 infrastructure needs, the entity must shall account for the

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262 revenues and expenditures of such impact fee in a separate  
 263 accounting fund.

264 (c) ~~Limit~~ Administrative charges for the collection of  
 265 impact fees must be limited to actual costs.

266 (d) The local government must provide ~~Require that~~ notice  
 267 ~~not be provided~~ no less than 90 days before the effective date  
 268 of an ordinance or resolution imposing a new or increased impact  
 269 fee. A county or municipality is not required to wait 90 days to  
 270 decrease, suspend, or eliminate an impact fee.

271 (e) Collection of the impact fee may not be required to  
 272 occur earlier than the date of issuance of the building permit  
 273 for the property that is subject to the fee.

274 (f) The impact fee must be proportional and reasonably  
 275 connected to, or have a rational nexus with, the need for  
 276 additional capital facilities and the increased impact generated  
 277 by the new residential or commercial construction.

278 (g) The impact fee must be proportional and reasonably  
 279 connected to, or have a rational nexus with, the expenditures of  
 280 the funds collected and the benefits accruing to the new  
 281 residential or nonresidential construction.

282 (h) The local government must specifically earmark funds  
 283 collected under the impact fee for use in acquiring,  
 284 constructing, or improving capital facilities to benefit new  
 285 users.

286 (i) Revenues generated by the impact fee may not be used,  
 287 in whole or in part, to pay existing debt or for previously  
 288 approved projects unless the expenditure is reasonably connected  
 289 to, or has a rational nexus with, the increased impact generated  
 290 by the new residential or nonresidential construction.

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291 (j) The local government must credit against the collection  
 292 of the impact fee any contributions related to public  
 293 educational facilities, including, but not limited to, land  
 294 dedication, site planning and design, and construction, whether  
 295 provided in a proportionate share agreement or any other form of  
 296 exaction. Any such contributions must be applied to reduce  
 297 impact fees on a dollar-for-dollar basis at fair market value.  
 298 If the local government adjusts the amount of impact fees  
 299 assessed, outstanding and unused credits must be adjusted  
 300 accordingly.

301 (4) If the holder of impact fee or mobility fee credits  
 302 granted by a local government, whether granted under this  
 303 section, s. 380.06, or otherwise, uses such credits in lieu of  
 304 the actual payment of an impact fee or mobility fee, the holder  
 305 of those credits must, whenever they are utilized, receive the  
 306 full value of the credit as of the date on which it was first  
 307 established based on the impact fee or mobility fee rate that  
 308 was in effect on such date.

309 (5)(4) Audits of financial statements of local governmental  
 310 entities and district school boards which are performed by a  
 311 certified public accountant pursuant to s. 218.39 and submitted  
 312 to the Auditor General must include an affidavit signed by the  
 313 chief financial officer of the local governmental entity or  
 314 district school board stating that the local governmental entity  
 315 or district school board has complied with this section.

316 (6)(a)(5) In any action challenging an impact fee or the  
 317 government's failure to provide required dollar-for-dollar  
 318 credits for the payment of impact fees as provided in s.  
 319 163.3180(6)(h)2.b, the government has the burden of proving by a

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320 preponderance of the evidence that the imposition or amount of  
 321 the fee ~~or credit~~ meets the requirements of state legal  
 322 precedent ~~or~~ and this section. The court may not use a  
 323 deferential standard for the benefit of the government.

324 (b) In any action challenging an impact fee, the court may  
 325 award attorney fees and costs to the prevailing party. However,  
 326 the court must award attorney fees and costs to a prevailing  
 327 property owner if the court determines that the impact fee is  
 328 not:

329 1. Reasonably connected to, or does not have a rational  
 330 nexus with, the need for additional capital facilities and the  
 331 increased impact generated by the new residential or  
 332 nonresidential construction;

333 2. Reasonably connected to, or does not have a rational  
 334 nexus with, the expenditures of the funds collected and the  
 335 benefits accruing to the new residential or nonresidential  
 336 construction; or

337 3. Proportionate to and exceeds the impacts of the proposed  
 338 use that the governmental entity seeks to avoid, minimize, or  
 339 mitigate.

340 (7) This section applies to mobility fees adopted pursuant  
 341 to s. 163.3180(5)(i).

342 (8) Notwithstanding anything to the contrary in this  
 343 chapter, if a local government does not provide the credit  
 344 required in subsection (3)(j) for a project, then the local  
 345 government may not impose concurrency mitigation conditions of  
 346 any kind on the project.

347 (9) Beginning July 1, 2019, a local government may not  
 348 charge an impact fee for the development or construction of

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349 housing that is affordable, as defined in s. 420.9071.

350 Section 5. Section 166.033, Florida Statutes, is amended to  
351 read:

352 166.033 Development permits and orders.-

353 (1) Within 30 days after receiving an application for  
354 approval of a development permit or development order, a  
355 municipality must review the application for completeness and  
356 issue a letter indicating that all required information is  
357 submitted or specifying with particularity any areas that are  
358 deficient. If deficient, the applicant has 30 days to address  
359 the deficiencies by submitting the required additional  
360 information. Within 90 days of the initial submission, if  
361 complete, or the supplemental submission, whichever is later,  
362 the municipality must approve, approve with conditions, or deny  
363 the application for a development permit or development order.  
364 The time periods contained in this subsection may be waived in  
365 writing by the applicant. An approval, approval with conditions,  
366 or denial of the application for a development permit or  
367 development order must include written findings supporting the  
368 municipality's decision.

369 (2)(1) When reviewing an application for a development  
370 permit or development order that is certified by a professional  
371 listed in s. 403.0877, a municipality may not request additional  
372 information from the applicant more than three times, unless the  
373 applicant waives the limitation in writing. Before a third  
374 request for additional information, the applicant must be  
375 offered a meeting to attempt to resolve outstanding issues.  
376 Except as provided in subsection (5)(4), if the applicant  
377 believes the request for additional information is not

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378 authorized by ordinance, rule, statute, or other legal  
379 authority, the municipality, at the applicant's request, shall  
380 proceed to process the application for approval or denial.  
381 (3)(2) When a municipality denies an application for a  
382 development permit or development order, the municipality shall  
383 give written notice to the applicant. The notice must include a  
384 citation to the applicable portions of an ordinance, rule,  
385 statute, or other legal authority for the denial of the permit  
386 or order.

387 (4)(3) As used in this section, the ~~terms term~~ "development  
388 permit" and "development order" have ~~has~~ the same meaning as in  
389 s. 163.3164, but do ~~does~~ not include building permits.

390 (5)(4) For any development permit application filed with  
391 the municipality after July 1, 2012, a municipality may not  
392 require as a condition of processing or issuing a development  
393 permit or development order that an applicant obtain a permit or  
394 approval from any state or federal agency unless the agency has  
395 issued a final agency action that denies the federal or state  
396 permit before the municipal action on the local development  
397 permit.

398 (6)(5) Issuance of a development permit or development  
399 order by a municipality does not ~~in any way~~ create any right on  
400 the part of an applicant to obtain a permit from a state or  
401 federal agency and does not create any liability on the part of  
402 the municipality for issuance of the permit if the applicant  
403 fails to obtain requisite approvals or fulfill the obligations  
404 imposed by a state or federal agency or undertakes actions that  
405 result in a violation of state or federal law. A municipality  
406 shall attach such a disclaimer to the issuance of development

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407 permits and shall include a permit condition that all other  
408 applicable state or federal permits be obtained before  
409 commencement of the development.

410 ~~(7)(6)~~ This section does not prohibit a municipality from  
411 providing information to an applicant regarding what other state  
412 or federal permits may apply.

413 Section 6. Section 166.04151, Florida Statutes, is amended  
414 to read:

415 166.04151 Affordable housing.—

416 (1) Notwithstanding any other provision of law, a  
417 municipality may adopt and maintain in effect any law,  
418 ordinance, rule, or other measure that is adopted for the  
419 purpose of increasing the supply of affordable housing using  
420 land use mechanisms such as inclusionary housing ordinances. A  
421 municipality may not, however, adopt or impose a requirement in  
422 any form, including, without limitation, by way of a  
423 comprehensive plan amendment, ordinance, or land development  
424 regulation or as a condition of a development order or  
425 development permit, which has any of the following effects:

426 (a) Mandating or establishing a maximum sales price or  
427 lease rental for privately produced dwelling units.

428 (b) Requiring the allocation or designation, whether  
429 directly or indirectly, of privately produced dwelling units for  
430 sale or rental to any particular class or group of purchasers or  
431 tenants.

432 (c) Requiring the provision of any on-site or off-site  
433 workforce or affordable housing units or a contribution of land  
434 or money for such housing, including, but not limited to, the  
435 payment of any flat or percentage-based fee whether calculated

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436 on the basis of the number of approved dwelling units, the  
437 amount of approved square footage, or otherwise.

438 (2) This section does not limit the authority of a  
439 municipality to create or implement a voluntary density bonus  
440 program or any other voluntary incentive-based program designed  
441 to increase the supply of workforce or affordable housing units.

442 Section 7. This act shall take effect upon becoming a law.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: CS/SB 380

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Homeowners' Insurance Policy Disclosures

DATE: March 14, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 380 requires when an insurer issues homeowners policies that excludes coverage for the peril of flood they must provide to their policyholders a disclosure informing them of the benefits of flood insurance.

The new requirements will apply to policies issued or renewed on or after July 1, 2019.

**II. Present Situation:**

**The National Flood Insurance Program (NFIP)**

The NFIP was created by the passage of the National Flood Insurance Act of 1968.<sup>1</sup> The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government.

---

<sup>1</sup> FEMA, National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, *available at* <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed January 29, 2019).

## Private Market Flood Insurance in Florida

In 2014, the Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.<sup>2</sup> “Flood” is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.<sup>3</sup>

The Legislature amended the law in 2015<sup>4</sup> and 2017.<sup>5</sup> Flood insurance is a separate line of insurance from homeowner’s property insurance and is not included in such a policy.<sup>6</sup> In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner’s property insurance policy does not cover the flood damage.<sup>7</sup> If the homeowner does not separately purchase flood insurance through the NFIP or an admitted Florida flood insurer, such losses will be uninsured.

The Office of Insurance Regulation reports there are 29 admitted insurance companies currently writing private flood insurance in the state.<sup>8</sup>

## Insurance Policy Notice Requirements

The Florida Insurance Code<sup>9</sup> requires that various insurance policies include specific notices to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. The content of the notice depends on the type of coverage provided. Statutory provisions requiring notices often establish requirements regarding their content, print type or size, and appearance (e.g., bold type or all capitalized text).

In 2018, the Legislature passed a requirement that all insurers issuing homeowners policies must provide to their policyholders a disclosure in bold, 18 point font that must read:

**“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER’S INSURANCE POLICY DOES**

---

<sup>2</sup> Ch. 2014-80, Laws of Fla.

<sup>3</sup> Section 627.715(1)(b), F.S.

<sup>4</sup> Ch. 2015-69, Laws of Fla.

<sup>5</sup> Ch. 2017-142, Laws of Fla.

<sup>6</sup> See Ch. 627, Part X, F.S.

<sup>7</sup> Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

<sup>8</sup> Presentation by OIR “Flood Facts & Florida’s Flood Insurance Market” January 2019. (On file with the Senate Committee on Banking and Insurance)

<sup>9</sup> Section 624.01, F.S., provides that Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.”

NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 627.7011, F.S., to require when an insurer issues homeowners policies that excludes the coverage for the peril of flood they must provide to their policyholders a disclosure as to the benefit of flood insurance. When an insurer issues a homeowners policy that includes flood coverage they will no longer be required to provide such disclosure to their policyholders.

**Section 2** provides the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

---

<sup>10</sup> Ch. 2018-63 Laws of Fla. (amending s. 627.7011, F.S.).

**B. Private Sector Impact:**

When an insurer issues homeowners policies that include coverage for the peril of flood, the insurer will no longer have to print and provide to their policyholders a disclosure as to the benefits of flood insurance.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.7011 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 19, 2019:**

The committee substitute adds “Disclosures” to the title of the bill.

**B. Amendments:**

None.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

3-20-19

Bill Number (if applicable)

380

Topic

Flood Insurance

Amendment Barcode (if applicable)

Name

Lisa Miller

Job Title

CEO, Lisa Miller + Associates

Address

331 N Monroe St

Phone

850

Street

Tallahassee

FL

32301

City

State

Zip

Email

lisamiller@lisamillerassociates.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Security First Insurance Co

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/19

Bill Number (if applicable) SP 380

Topic Homeowners' Insurance Policies

Amendment Barcode (if applicable) \_\_\_\_\_

Name Caitlin Murray

Job Title Director of Government Affairs

Address 200 E. Gaines St.

Phone (850) 413-5805

Street Tallahassee City FL State 32303 Zip

Email Caitlin.murray@flair.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By the Committee on Banking and Insurance; and Senator Brandes

597-02480-19

2019380c1

1 A bill to be entitled  
 2 An act relating to homeowners' insurance policy  
 3 disclosures; amending s. 627.7011, F.S.; revising  
 4 circumstances under which insurers issuing homeowners'  
 5 insurance policies must include a specified statement  
 6 relating to flood insurance with the policy documents  
 7 at initial issuance and renewals; providing an  
 8 effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (4) of section 627.7011, Florida  
 12 Statutes, is amended to read:

13 627.7011 Homeowners' policies; offer of replacement cost  
 14 coverage and law and ordinance coverage.—

15 (4) (a) An insurer that issues a homeowner's insurance  
 16 policy must include with the policy documents at initial  
 17 issuance and every renewal, in bold type no smaller than 18  
 18 points, the following statement:

19  
 20  
 21 "LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN  
 22 IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE.  
 23 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."  
 24

25 (b) An insurer that issues a homeowner's insurance policy  
 26 that does not provide flood insurance coverage must include with  
 27 the policy documents at initial issuance and every renewal, in  
 28 bold type no smaller than 18 points, the following statement:  
 29

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02480-19

2019380c1

30 "FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE  
 31 PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S  
 32 INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE  
 33 RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN  
 34 CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD  
 35 INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES  
 36 CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE  
 37 SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE  
 38 AGENT."  
 39

40 (c) The intent of this subsection is to encourage  
 41 policyholders to purchase sufficient coverage to protect them in  
 42 case events excluded from the standard homeowners policy, such  
 43 as law and ordinance enforcement and flood, combine with covered  
 44 events to produce damage or loss to the insured property. The  
 45 intent is also to encourage policyholders to discuss these  
 46 issues with their insurance agent.

47 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1244  
 INTRODUCER: Senator Wright  
 SUBJECT: Community Development District Bond Financing  
 DATE: March 18, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	FT	_____
3.	_____	_____	RC	_____

**I. Summary:**

SB 1244 increases the number of votes required for a community development district (CDD) board to authorize bonds from a majority vote to a two-thirds vote of the board beginning October 1, 2019.

**II. Present Situation:**

**Community Development Districts**

Community development districts (CDDs) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. These independent special districts<sup>1</sup> are created pursuant to and governed by the Uniform Community Development District Act of 1980.<sup>2</sup> The Act lays out the exclusive and uniform procedures for establishing and operating a CDD.<sup>3</sup> CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.<sup>4</sup> Currently, there are 685 active CDDs in Florida.<sup>5</sup>

<sup>1</sup> A “special district” is “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” Section 189.012(6), F.S. An “independent special district” is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. Section 189.012(3), F.S. *Also, see s. 189.012(2), F.S.*

<sup>2</sup> Section 190.001, F.S.

<sup>3</sup> *See ss. 190.004, 190.005, F.S.*

<sup>4</sup> Section 190.002(1)(a), F.S.

<sup>5</sup> Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 8, 2019).

CDDs are created either by the Florida Land and Water Adjudicatory Commission (FLWAC)<sup>6</sup> or by local ordinance. CDDs of less than 2,500 acres are established by ordinance of the county having jurisdiction over the majority of the land in the area in which the CDD will be located, with certain exceptions.<sup>7</sup> For example, CDDs that lie wholly within a municipality are created by municipal ordinance.<sup>8</sup> CDDs that are 2,500 acres or more are established by petitioning the FLWAC to adopt an administrative rule creating the district.<sup>9</sup> CDDs remain in existence unless dissolved pursuant to statute, merged with another district, or all authorized services are transferred to a general-purpose unit of local government.<sup>10</sup>

A CDD is controlled by a five-member board of supervisors (board) elected by the landowners of the district. Each landowner is entitled to one vote for each acre owned. A new board election, held among the qualified electors of the district, occurs when the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (10 years for districts exceeding 5,000 acres).<sup>11</sup>

The board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general-purpose government.<sup>12</sup> General powers include the authority to assess and impose ad valorem taxes within the district and to issue bonds.<sup>13</sup> In part, the special powers over public improvements and community facilities include, unless prohibited elsewhere,<sup>14</sup> the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- District roads and road improvements.<sup>15</sup>

### **CDD Bond Financing**

A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office.<sup>16</sup> Bond resolutions authorize the terms, covenants, or conditions of bonds,<sup>17</sup> but cannot authorize bond proceeds to be used to fund the ongoing district operations,<sup>18</sup> bond interest rates that deviate from the statewide

---

<sup>6</sup> Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. See s. 20.03(1), F.S.).

<sup>7</sup> Section 190.005(2), F.S.

<sup>8</sup> Section 190.005(2)(e), F.S.

<sup>9</sup> Section 190.005(1), F.S.

<sup>10</sup> Section 190.046(2), F.S.

<sup>11</sup> See s. 190.006, F.S.

<sup>12</sup> See s. 190.004(3), F.S.

<sup>13</sup> Section 190.011, F.S.

<sup>14</sup> Sections 190.005(1)(f) and (2)(d), F.S.

<sup>15</sup> Section 190.012, F.S.

<sup>16</sup> Section 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.

<sup>17</sup> Section 190.016(2), F.S.

<sup>18</sup> Section 190.016(13), F.S.

maximum,<sup>19</sup> or bonds that mature over a period of more than 40 years.<sup>20</sup> If bond proceeds are insufficient to complete an associated project, a board may authorize additional bonds in compliance with the original bond resolution or proceeding.<sup>21</sup> Finally, if a CDD defaults on bond payments, the default does not become a debt of a local general-purpose government or the state.<sup>22</sup>

Since 2017, 147 CDDs reported issuing 219 revenue bonds. No general obligation or benefit bonds have been issued. Thirteen CDDs issued bonds categorized as a bank loan, line of credit, or other.<sup>23</sup>

### ***General Obligation Bonds***

General obligation bonds are secured by a pledge of the full faith and credit and taxing power of the CDD in addition to special tax levies and other sources provided or pledged to pay the bonds.<sup>24</sup> A CDD board may also unconditionally and irrevocably pledge to levy ad valorem taxes on all taxable property in the district, with no limit on tax rate or amount, to repay general obligation bonds.<sup>25</sup> A pledge of the full faith and credit and taxing power of the district provides a bondholder with a recourse against the district's general fund for payment.<sup>26</sup>

CDD boards may only authorize general obligation bonds to finance or refinance capital projects or refund outstanding bonds.<sup>27</sup> For bonds to be authorized, the total amount of outstanding bond principal for the district cannot exceed 35 percent of the assessed value of the taxable property within the district.<sup>28</sup> With the exception of refunding bonds, general obligation bonds must be approved at a referendum as prescribed by the State Constitution.<sup>29</sup>

### ***Revenue Bonds***

Revenue bonds are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and do not pledge the property, credit, or general tax revenue of the district.<sup>30</sup> Pledged sources include anticipated project revenues, end user rates or charges,

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<sup>19</sup> Section 215.84, F.S.

<sup>20</sup> Section 190.016(2), F.S.

<sup>21</sup> Section 190.016(6), F.S.

<sup>22</sup> Section 190.016(15), F.S.

<sup>23</sup> See Email and attachments from Sharon Williams, State Board of Administration of Florida, Division of Bond Finance, "Community Development Districts Since 2017" (February 22, 2019) (on file with the Senate Committee on Community Affairs).

<sup>24</sup> Section 190.003(13), F.S.

<sup>25</sup> Section 190.016(9)(b), F.S.

<sup>26</sup> Section 190.003(13), F.S.

<sup>27</sup> Section 190.016(9)(a), F.S.

<sup>28</sup> *Id.* Existing general obligation bonds are not included in the outstanding bond total if they are also secured by: 1) special assessments levied in an amount sufficient to pay bond principal and interest that have been equalized and confirmed as provided by s. 170.08, F.S.; 2) district revenues from water, sewer, or water and sewer user fees when the amount is sufficient to pay bond principal and interest; or 3) any combination of such assessments and revenues. Section 190.016(9)(d)1.-3., F.S.

<sup>29</sup> Art. VII, s. 12(a), Fla. Const. and Section 190.016(9)(a), F.S.

<sup>30</sup> Section 190.003(19), F.S.

special assessments, and other revenue generating district activities.<sup>31</sup> Revenue bonds are not counted as a debt of the CDD.<sup>32</sup>

CDD boards can authorize revenue bonds without restrictions on the amount or type of project to be financed.<sup>33</sup> A referendum is not required unless the revenue bond will be secured by the full faith and credit and taxing power of the district.<sup>34</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 190.016, F.S., to increase the vote threshold required to authorize bonds issued by a CDD board from a majority vote to a two-thirds vote of the board beginning October 1, 2019.

**Section 2** provides the bill takes effect October 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

---

<sup>31</sup> Section 190.016(8)(a), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The revised voting requirement may reduce the number of CDD bond issuances compared to that which would occur under current law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 190.016 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/19

Bill Number (if applicable) SB 1244

Topic Community Development District Bond Financing Amendment Barcode (if applicable) \_\_\_\_\_

Name Demetrius Minor

Job Title Director of Coalitions

Address \_\_\_\_\_ Phone \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information  In Support  Against

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Wright

14-01450-19

20191244\_\_

1 A bill to be entitled  
 2 An act relating to community development district bond  
 3 financing; amending s. 190.016, F.S.; requiring  
 4 district boards to authorize bonds by a two-thirds  
 5 vote of the members; providing an effective date.  
 6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8  
 9 Section 1. Subsection (2) of section 190.016, Florida  
 10 Statutes, is amended to read:  
 11 190.016 Bonds.—  
 12 (2) AUTHORIZATION AND FORM OF BONDS.—Beginning October 1,  
 13 2019, any general obligation bonds, benefit bonds, or revenue  
 14 bonds may be authorized by resolution or resolutions of the  
 15 board which shall be adopted by a two-thirds vote majority of  
 16 all the members ~~thereof~~ then in office. Such resolution or  
 17 resolutions may be adopted at the same meeting at which they are  
 18 introduced and need not be published or posted. The board may,  
 19 by resolution, authorize the issuance of bonds and fix the  
 20 aggregate amount of bonds to be issued; the purpose or purposes  
 21 for which the moneys derived therefrom shall be expended,  
 22 including, but not limited to, payment of costs as defined in s.  
 23 190.003(8); the rate or rates of interest, in compliance with s.  
 24 215.84; the denomination of the bonds; whether or not the bonds  
 25 are to be issued in one or more series; the date or dates of  
 26 maturity, which shall not exceed 40 years from their respective  
 27 dates of issuance; the medium of payment; the place or places  
 28 within or without the state where payment shall be made;  
 29 registration privileges; redemption terms and privileges,

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

14-01450-19

20191244\_\_

30 whether with or without premium; the manner of execution; the  
 31 form of the bonds, including any interest coupons to be attached  
 32 thereto; the manner of execution of bonds and coupons; and any  
 33 and all other terms, covenants, and conditions thereof and the  
 34 establishment of revenue or other funds. Such authorizing  
 35 resolution or resolutions may further provide for the contracts  
 36 authorized by s. 159.825(1)(f) and (g) regardless of the tax  
 37 treatment of such bonds being authorized, subject to the finding  
 38 by the board of a net saving to the district resulting by reason  
 39 thereof. Such authorizing resolution may further provide that  
 40 such bonds may be executed in accordance with the Registered  
 41 Public Obligations Act, except that bonds not issued in  
 42 registered form shall be valid if manually countersigned by an  
 43 officer designated by appropriate resolution of the board. The  
 44 seal of the district may be affixed, lithographed, engraved, or  
 45 otherwise reproduced in facsimile on such bonds. In case any  
 46 officer whose signature appears ~~shall appear~~ on any bonds or  
 47 coupons ceases ~~shall cease~~ to be such officer before the  
 48 delivery of such bonds, such signature or facsimile shall  
 49 nevertheless be valid and sufficient for all purposes ~~the same~~  
 50 as if he or she had remained in office until such delivery.  
 51 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: CS/SB 710

INTRODUCER: Community Affairs Committee and Senator Baxley

SUBJECT: Administrative Review of Property Taxes

DATE: March 21, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			FT	
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 710 provides a timeframe for the filing of certain petitions to the county value adjustment board (VAB) in counties that vote to extend their tax roll submissions. Specifically, late-filed, good cause petitions in these counties must be filed within 55 days after the mailing of notices of proposed property taxes. The bill also provides that in counties with specified high volume VAB petitions, a good cause for rescheduling a hearing does not include being scheduled in different jurisdictions at the same time and place unless the hearings involve the same petitioner or property appraiser and the petitioner agrees to a rescheduling. A VAB clerk in these counties may also request petitioners and property appraisers to identify certain days when either party is unavailable for hearing.

**II. Present Situation:**

**Overview of Property Taxes and Value Adjustment Boards**

*The Assessment Process*

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of

each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup>

Each property appraiser annually submits the county’s tax roll to the Department of Revenue (DOR) by July 1.<sup>4</sup> In August, the property appraiser sends a notice of proposed property taxes, commonly known as a Truth-in-Millage or TRIM notice, to each taxpayer providing specific tax information about her or his parcel.<sup>5</sup> Taxpayers who disagree with the property appraiser’s assessment or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;<sup>6</sup>
- Appeal the assessment by filing a petition with the county VAB;<sup>7</sup> or
- Challenge the assessment in circuit court.<sup>8</sup>

Taxes become payable on November 1.<sup>9</sup> If assessments have not become final by then – which is sometimes the case for assessments subject to VAB petitions – the board of county commissioners may vote to request the tax collector to extend the tax roll prior to the completion of VAB proceedings and instruct the tax collector to begin issuing tax notices based on the property appraiser’s initial tax roll.<sup>10</sup> As part of extending the roll, the board may require the VAB to certify the portion of the roll that it has completed.<sup>11</sup>

### ***The Value Adjustment Board Process***

Each county has a VAB, comprised of two members of the governing body of the county, one member of the school board, and two citizen members appointed by the governing body of the county.<sup>12</sup> The county clerk acts as the clerk of the VAB.<sup>13</sup> A property owner may initiate an assessment valuation challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.<sup>14</sup>

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<sup>1</sup> Both real and tangible personal property are subject to the tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the state constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> Section 193.1142(1), F.S.

<sup>5</sup> Section 194.011(1), F.S. The timing of the TRIM notice varies depending on certain actions by the property appraiser and the taxing authorities. Generally, the notice is mailed in the latter half of August. *See* s. 200.065, F.S.

<sup>6</sup> Section 194.011(2), F.S.

<sup>7</sup> Section 194.011(3), F.S.

<sup>8</sup> Section 194.171, F.S.

<sup>9</sup> Section 197.333, F.S.

<sup>10</sup> *See* ss. 193.122(1) and 197.323, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 194.015, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 194.011(3)(d), F.S. With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain

The clerk of the VAB will schedule the petition for a hearing, during which a special magistrate will hear testimony and make a recommendation to the VAB on how the petition should be resolved.<sup>15</sup> The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.<sup>16</sup> The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.<sup>17</sup> The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.<sup>18</sup>

### ***Volume, Timing, and Scheduling of Petitions to the Value Adjustment Board***

The volume of VAB petitions in counties varies widely across the state. DOR data from 2016 indicates that over 108,000 petitions were filed statewide with Palm Beach County receiving nearly 5,000, Broward County over 17,000 and Miami-Dade County over 65,000.<sup>19</sup>

As noted above, a property owner may initiate a challenge of her or his tax assessment valuation by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice. While the VAB may not extend the time for filing a petition, nor set a deadline for late-filed petitions, the VAB is not barred from considering a petition filed after the statutory deadline.<sup>20</sup>

Petitioners and property appraisers are authorized to reschedule a hearing before a VAB a single time for good cause.<sup>21</sup> “Good cause” is defined to mean circumstances beyond the control of the person seeking to reschedule the hearing which would reasonably prevent adequate representation at the hearing.<sup>22</sup>

DOR rule provides that “good cause” means the verifiable showing of extraordinary circumstances, as follows:

- Personal, family, or business crisis or emergency at a critical time or for an extended period of time;
- Physical or mental illness, infirmity, or disability;
- Miscommunication with, or misinformation received from, the board clerk, property appraiser, or their staff;
- Any other cause beyond the control of the petitioner that would prevent a reasonably prudent petitioner from timely filing.<sup>23</sup>

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nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser.

<sup>15</sup> Section 194.035, F.S.

<sup>16</sup> Section 194.034(2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See DOR, VAB Summary Table, available at <http://floridarevenue.com/property/Pages/DataPortal.aspx> (select the link for VAB Summary) (last visited Mar. 13, 2019).

<sup>20</sup> See Rule 12D-9.015(11), F.A.C.

<sup>21</sup> Section 194.032(2)(a), F.S.

<sup>22</sup> *Id.* The phrase “circumstances beyond the control of the person” is not further delineated.

<sup>23</sup> See *supra* note 19.

Given the current parameters governing late-filed, good cause petitions, VAB hearings to review petitions in some counties often occur long after --- sometimes months after --- the initial filing deadline for petitions has passed.

### III. Effect of Proposed Changes:

**Section 1** amends s. 194.011, F.S., to permit counties that vote to extend the tax roll to allow a person to file a good cause, late-filed petition objecting to a tax assessment. “Good cause” means circumstances beyond the control of the person seeking the late-filed petition. Late-filed petitions must be filed within 55 days after the property appraiser’s mailing of the assessment notice.

**Section 2** amends s. 194.032, F.S., on the rescheduling of a VAB hearing for “good cause.” In counties where the number of petitions exceeds 5,000 in a year the term “good cause” does not include being scheduled for two separate hearings in different jurisdictions at the same time and date unless the hearings involve the same petitioner or property appraiser and the petitioner agrees to reschedule the hearing. Before the VAB hearings begin for the year in these counties, the VAB clerk may request the property appraiser and the petitioner to identify up to 10 business days each on which the two parties are *unavailable* for hearing.

**Section 3** provides an effective date of July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

VAB petitioners in counties with a high volume of petitions who are simultaneously scheduled for hearings in different locations will be limited in using this circumstance as a justification to reschedule a hearing.

**C. Government Sector Impact:**

The bill's deadline for late-filed petitions to the VAB in affected counties may result in timelier VAB reviews and assessment roll certifications in those counties. The ability of certain VAB clerks to request availability dates from persons involved in the process may have a similar affect. DOR would need to amend rules 12D-9.015(14) and 12D-16.002, F.A.C, and the DR-486 form series.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 194.011, 194.032.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on March 20, 2019:**

- Provides a 55-day time window for late-filed VAB petitions.
- Provides that a “good cause” definition for rescheduling a hearing in counties with over 5,000 VAB petitions does not include being scheduled for two separate hearings in different jurisdictions at the same time and date unless the hearings involve the same petitioner or property appraiser and the petitioner agrees to reschedule the hearing.
- Provides that in counties with over 5,000 VAB petitions, prior to beginning VAB hearings, a VAB clerk may request the property appraiser and a petitioner to identify up to 10 business days each on which the two parties are *unavailable* for hearing.

**B. Amendments:**

None.



166472

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Community Affairs (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 53 - 91  
and insert:  
the petition late. A late-filed petition must be filed within 55 days after the mailing of the notice by the property appraiser.

Section 2. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2) (a) The clerk of the governing body of the county shall



11 prepare a schedule of appearances before the board based on  
12 petitions timely filed with him or her. The clerk shall notify  
13 each petitioner of the scheduled time of his or her appearance  
14 at least 25 calendar days before the day of the scheduled  
15 appearance. The notice must indicate whether the petition has  
16 been scheduled to be heard at a particular time or during a  
17 block of time. If the petition has been scheduled to be heard  
18 within a block of time, the beginning and ending of that block  
19 of time must be indicated on the notice; however, as provided in  
20 paragraph (b), a petitioner may not be required to wait for more  
21 than a reasonable time, not to exceed 2 hours, after the  
22 beginning of the block of time. The property appraiser must  
23 provide a copy of the property record card containing  
24 information relevant to the computation of the current  
25 assessment, with confidential information redacted, to the  
26 petitioner upon receipt of the petition from the clerk  
27 regardless of whether the petitioner initiates evidence  
28 exchange, unless the property record card is available online  
29 from the property appraiser, in which case the property  
30 appraiser must notify the petitioner that the property record  
31 card is available online. The petitioner and the property  
32 appraiser may each reschedule the hearing a single time for good  
33 cause. As used in this paragraph, the term "good cause" means  
34 circumstances beyond the control of the person seeking to  
35 reschedule the hearing which reasonably prevent the party from  
36 having adequate representation at the hearing. However, for a  
37 county in which the number of petitions filed exceeds 5,000 in  
38 any year, the term does not include being scheduled for two  
39 separate hearings in different jurisdictions at the same time or



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40 on the same date, unless the hearings involve the same  
41 petitioner or property appraiser and the petitioner agrees to  
42 reschedule the hearing. If the hearing is rescheduled by the  
43 petitioner or the property appraiser, the clerk shall notify the  
44 petitioner of the rescheduled time of his or her appearance at  
45 least 15 calendar days before the day of the rescheduled  
46 appearance, unless this notice is waived by both parties. For  
47 counties in which the number of petitions filed exceeds 5,000 in  
48 any year, before the value adjustment board begins its hearings  
49 for the year, the clerk may request that the property appraiser  
50 and the petitioner identify up to 10 business days each on which  
51 he or she is unavailable for hearing.

52  
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete line 10

56 and insert:

57 circumstances in certain counties; authorizing clerks  
58 of county governing bodies of such counties, within a  
59 certain timeframe, to request property appraisers and  
60 petitioners to identify certain dates of  
61 unavailability for hearing; providing an effective  
62 date.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3.20.19 Bill Number (if applicable) 710

Topic Administrative Review of Property Taxes Amendment Barcode (if applicable) \_\_\_\_\_

Name Albert Balisdo

Job Title \_\_\_\_\_

Address 201 W Pale Oak Blvd Phone 8502573410

Street Fall City FL State \_\_\_\_\_ Zip 32501

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of Property Appraisers

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

By Senator Baxley

12-01228-19

2019710\_\_

1 A bill to be entitled  
 2 An act relating to the administrative review of  
 3 property taxes; amending s. 194.011, F.S.; providing  
 4 that, in certain counties, a petition to the value  
 5 adjustment board may be filed late for good cause;  
 6 defining the term "good cause"; requiring that late  
 7 filed petitions be filed within a specified timeframe;  
 8 amending s. 194.032, F.S.; revising the definition of  
 9 the term "good cause" to exclude certain  
 10 circumstances; providing an effective date.

11

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

13

14 Section 1. Present paragraph (h) of subsection (3) of  
 15 section 194.011, Florida Statutes, is redesignated as paragraph  
 16 (i), and a new paragraph (h) is added to that subsection, to  
 17 read:

18 194.011 Assessment notice; objections to assessments.—  
 19 (3) A petition to the value adjustment board must be in  
 20 substantially the form prescribed by the department.  
 21 Notwithstanding s. 195.022, a county officer may not refuse to  
 22 accept a form provided by the department for this purpose if the  
 23 taxpayer chooses to use it. A petition to the value adjustment  
 24 board must be signed by the taxpayer or be accompanied at the  
 25 time of filing by the taxpayer's written authorization or power  
 26 of attorney, unless the person filing the petition is listed in  
 27 s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a  
 28 petition with a value adjustment board without the taxpayer's  
 29 signature or written authorization by certifying under penalty

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

12-01228-19

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30 of perjury that he or she has authorization to file the petition  
 31 on behalf of the taxpayer. If a taxpayer notifies the value  
 32 adjustment board that a petition has been filed for the  
 33 taxpayer's property without his or her consent, the value  
 34 adjustment board may require the person filing the petition to  
 35 provide written authorization from the taxpayer authorizing the  
 36 person to proceed with the appeal before a hearing is held. If  
 37 the value adjustment board finds that a person listed in s.  
 38 194.034(1)(a) willfully and knowingly filed a petition that was  
 39 not authorized by the taxpayer, the value adjustment board shall  
 40 require such person to provide the taxpayer's written  
 41 authorization for representation to the value adjustment board  
 42 clerk before any petition filed by that person is heard, for 1  
 43 year after imposition of such requirement by the value  
 44 adjustment board. A power of attorney or written authorization  
 45 is valid for 1 assessment year, and a new power of attorney or  
 46 written authorization by the taxpayer is required for each  
 47 subsequent assessment year. A petition shall also describe the  
 48 property by parcel number and shall be filed as follows:

49 (h) In counties that vote favorably to extend the roll  
 50 under s. 197.323(1), a petition may be filed late for good  
 51 cause. As used in this paragraph, the term "good cause" means  
 52 circumstances beyond the control of the person seeking to file  
 53 the petition late. Late-filed petitions must be filed within 30  
 54 days after the 25th day following the mailing of the notice by  
 55 the property appraiser.

56 Section 2. Paragraph (a) of subsection (2) of section  
 57 194.032, Florida Statutes, is amended to read:  
 58 194.032 Hearing purposes; timetable.—

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

12-01228-19

2019710\_\_

59 (2) (a) The clerk of the governing body of the county shall  
 60 prepare a schedule of appearances before the board based on  
 61 petitions timely filed with him or her. The clerk shall notify  
 62 each petitioner of the scheduled time of his or her appearance  
 63 at least 25 calendar days before the day of the scheduled  
 64 appearance. The notice must indicate whether the petition has  
 65 been scheduled to be heard at a particular time or during a  
 66 block of time. If the petition has been scheduled to be heard  
 67 within a block of time, the beginning and ending of that block  
 68 of time must be indicated on the notice; however, as provided in  
 69 paragraph (b), a petitioner may not be required to wait for more  
 70 than a reasonable time, not to exceed 2 hours, after the  
 71 beginning of the block of time. The property appraiser must  
 72 provide a copy of the property record card containing  
 73 information relevant to the computation of the current  
 74 assessment, with confidential information redacted, to the  
 75 petitioner upon receipt of the petition from the clerk  
 76 regardless of whether the petitioner initiates evidence  
 77 exchange, unless the property record card is available online  
 78 from the property appraiser, in which case the property  
 79 appraiser must notify the petitioner that the property record  
 80 card is available online. The petitioner and the property  
 81 appraiser may each reschedule the hearing a single time for good  
 82 cause. As used in this paragraph, the term "good cause" means  
 83 circumstances beyond the control of the person seeking to  
 84 reschedule the hearing which reasonably prevent the party from  
 85 having adequate representation at the hearing. The term does not  
 86 include being scheduled in different jurisdictions at the same  
 87 time or on the same date. If the hearing is rescheduled by the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

12-01228-19

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88 petitioner or the property appraiser, the clerk shall notify the  
 89 petitioner of the rescheduled time of his or her appearance at  
 90 least 15 calendar days before the day of the rescheduled  
 91 appearance, unless this notice is waived by both parties.  
 92 Section 3. This act shall take effect July 1, 2019.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1800

INTRODUCER: Community Affairs Committee and Senator Gibson

SUBJECT: Florida Building Code

DATE: March 21, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			IT	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1800 allows the Florida Building Commission (Commission), during the triennial update process of the Florida Building Code, to approve certain amendments without a finding that the amendments are needed in order to accommodate the specific needs of the state. Current law requires each proposed amendment to the Florida Building Code, including amendments to align the Florida Building Code with updated international and national model codes, to demonstrate that it is needed to accommodate the specific needs of the state. The Commission prescribes by rule the conditions which satisfy the “specific needs test.”

**II. Present Situation:**

**The Florida Building Code**

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code. The system provided four separate model codes that local governments could consider and adopt to establish minimum standards of health and life safety for the public. In that system, the state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they saw fit.<sup>1</sup>

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<sup>1</sup> See The Florida Building Commission, *Annual Report FY 2017-2018*, available at [https://www.floridabuilding.org/fbc/commission/FBC\\_0618/Commission/FBC\\_FY\\_2017-2018\\_Annual\\_Report.pdf](https://www.floridabuilding.org/fbc/commission/FBC_0618/Commission/FBC_FY_2017-2018_Annual_Report.pdf) (last visited Mar. 11, 2019).

In 1996 a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The same legislation created the Commission to develop and maintain the Florida Building Code and related programs and processes. The 2000 Legislature authorized implementation of the Florida Building Code, and the first edition replaced all local codes on March 1, 2002. There have been six editions to date, and the Commission initiated the development of the 7th Edition (2020) Florida Building Code in October of 2017.<sup>2</sup>

### **The Florida Building Commission**

The Commission, which is housed within the Florida Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.<sup>3</sup>

Most substantive issues before the Commission are vetted through a workgroup process. The Commission may adopt rules related to its consensus-based decision making process, including, but not limited to, super majority voting requirements. However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.<sup>4</sup>

### **Florida Building Code Update Cycle and Process**

Under s. 553.73, F.S., the Commission must update the Florida Building Code every three years.<sup>5</sup> The 2017 Legislature implemented amendments to s. 553.73, F.S., with regard to this triennial Florida Building Code update and amendment process.<sup>6</sup> Specifically, the Commission is no longer required to adopt the most recent version of specified model international codes (I-Codes)<sup>7</sup> and the National Electrical Code (NEC) as the foundation for the updated Florida Building Code. Instead, the update process now requires the Commission to review the I-Codes and the NEC and then decide which provisions are needed to accommodate the specific needs of the state. As part of the review, the Commission must adopt provisions required to maintain eligibility for federal funding and discounts for the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and

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<sup>2</sup> *Id.*

<sup>3</sup> Section 553.74, F.S.

<sup>4</sup> Section 553.76(2), F.S.

<sup>5</sup> Section 553.73(7)(a), F.S.

<sup>6</sup> Chapter 2017-149, s.11, Laws of Fla.

<sup>7</sup> These are the International Building Code, the International Fuel Gas Code, International Existing Building Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Energy Conservation Code.

Urban Development.<sup>8</sup> In essence, the change in the Florida Building Code update process reflect that the Florida Building Code, 6th Edition (2017) serves as the “base code” for the 2020 update process. The Commission must adopt update each update of the Florida Building Code by rule.<sup>9</sup>

### **Technical Amendments to the Florida Building Code**

Under the new triennial process, the Commission may adopt as a technical amendment to the Florida Building Code any portion of the I-Codes and NEC, but only as needed to accommodate the specific needs of the state.<sup>10</sup> Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted.<sup>11</sup> The Commission may approve technical amendments during the triennial update after the amendments have been subject to the following conditions:

- The proposed amendment must have been published on the Commission’s website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee (TAC).
- In order for a TAC to make a favorable recommendation to the Commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.
- After the TAC has considered and recommended approval of any proposed amendment, the proposal must be published on the Commission’s website for at least 45 days before consideration by the Commission.
- A proposal may be modified by the Commission based on public testimony and evidence from a public hearing held in accordance with ch. 120.

In addition to the technical amendment procedures described above within the triennial code update process, the Commission may also approve technical amendments once each year for statewide or regional application upon a finding that the amendment is needed in order to accommodate the specific needs of the state.<sup>12</sup> This once a year technical amendment approval process also extends to technical amendments to incorporate the Commission’s own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels, but only to the extent that the incorporation of interpretations is needed to modify the foundation codes to accommodate the specific needs of the state.<sup>13</sup>

### **Rule 61G20-2.002, F.A.C. on Statewide Amendments to the Florida Building Code**

In the fall of 2017, the Commission began the process to amend Rule 61G20-2.002 of the Florida Administrative Code, for the purpose of implementing the provisions of the 2017 legislation regarding processes for developing the Florida Building Code. The rule became effective March 27, 2018. Among the revisions were providing the purposes for which the Commission may

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<sup>8</sup> Sections 553.73(7)(c)-(d) and (9)(a), F.S.

<sup>9</sup> Section 553.73(1)(a), F.S.

<sup>10</sup> Section 553.73(7)(c), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 553.73(9)(a), F.S. Additional amendment approval criteria include a connection to health and safety, the ability to strengthen or improve codes, and no bias against materials, products, or methods.

<sup>13</sup> *Id.* and s. 553.775(3)(c), F.S.

amend the Florida Building Code and the publication timelines for consideration of proposed amendments by TACs and the Commission.

In addition, pursuant to the rule, “amendment” was defined to mean an alteration to the adopted provisions of the Florida Building Code. “Technical amendment” was defined to mean an alteration to the prescriptive requirements or reference standards for construction adopted by the code. Technical amendments needed to accommodate the specific needs of this state include but are not limited to amendments to the Florida Building Code that provide for the following:

- Establish minimum life safety construction requirements to protect buildings and their occupants from fire, wind, flood, and storm surge using the latest technical research and engineering standards for buildings and materials products.
- Provide for flood protection provisions that are consistent with the latest flood protection requirements of the National Flood Insurance Program.
- Maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.
- Provide for energy efficiency standards for buildings that meet or exceed the national energy standards as mandated by Title III of the Energy Conservation and Protection Act.
- Maintain coordination with the Florida Fire Prevention Code.
- Provide for the latest industry standards and design.<sup>14</sup>

### **Division of Administrative Hearings Rule Challenge**

In December of 2017, the Florida Association of American Institute of Architects, Inc. (FAAIA) filed a rule challenge to the Commission’s adoption of rule 61G20-2.002 of the Florida Administrative Code. The FAAIA challenged the rule as invalid based on their belief that the rule is an invalid exercise of the Commission’s delegated authority regarding implementation of the update process for the Florida Building Code. In February of 2018, the Division of Administrative Hearings ruled that the challenged provisions of Rule 61G20-2.002 (2) are a valid exercise of delegated authority and the petition was dismissed.<sup>15</sup>

### **Florida Building Code, 7th Edition (2020) Update Timeline<sup>16</sup>**

The Commission completed its review of changes to the I-Codes and NEC for possible inclusion in the Florida Building Code 7<sup>th</sup> Edition (2020) in October of 2018. The period for the public to propose modifications to the Florida Building Code 6<sup>th</sup> Edition (2017) occurred from November 2018 through mid-February 2019. Proposed modifications are being reviewed by the Commission’s TACs in meetings from March 14 - 26, 2019. The TACs’ recommendations regarding proposed modifications will subsequently be posted to the Commission’s website for a

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<sup>14</sup> Rule 61G20-2.002, F.A.C.

<sup>15</sup> *Florida Association of American Institute of Architects, Inc. v. Florida Building Commission*, Case No. 17-6578RP (Fla. DOAH 2018).

<sup>16</sup> Florida Department of Business and Professional Regulation: Florida Building Code Information System, *2020 Code Update Process – 7<sup>th</sup> Edition, Florida Building Code (2020)*, available at [http://www.floridabuilding.org/fbc/thecode/2020\\_Code\\_Development/2020\\_Code\\_Development\\_Process.htm](http://www.floridabuilding.org/fbc/thecode/2020_Code_Development/2020_Code_Development_Process.htm) (last visited Mar. 16, 2019)

minimum of 45 days and the public will be provided an opportunity to comment on the TACs' recommendations during this time-frame. The TACs will meet for a second time during the week of July 8-12, 2019 to review the public comments and provide TAC feedback on the public comments to the Commission. The Commission plans to consider the TACs' recommendations concurrent with the August, 2019 Commission meeting, conduct rule development workshops on February 4, 2020 and April 7, 2020, and conduct a rule adoption hearing on the final version of the Florida Building Code 7<sup>th</sup> Edition (2020) on June 8, 2020.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 553.73(7)(a), F.S., to allow the Florida Building Commission, upon the required review of certain international model codes, to approve triennial amendments to the Florida Building Code without a finding that the amendments are needed to meet the specific needs of the state. However, the bill provides the Commission the discretion to require such finding if it so chooses.

**Section 2** provides an effective date of January 1, 2020.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to a DBPR analysis of SB 1800,<sup>17</sup> if the bill were to pass, the Commission would likely be able to incorporate the new statutory provision into the code updating process that is currently underway. The necessary rulemaking to incorporate the bill's new provision into the process would likely take about three months to complete.

**VIII. Statutes Affected:**

This bill substantially amends section 553.73 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Community Affairs on March 20, 2019:**

The committee substitute changes the effective date to January 1, 2020.

- B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>17</sup> Florida Department of Business and Professional Regulation, *Senate Bill 1800: 2019 Agency Legislative Bill Analysis*, available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=24140&yr=2019> (last visited Mar. 16, 2019)



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Community Affairs (Gibson) recommended the following:

1           **Senate Amendment**

2

3           Delete line 49

4           and insert:

5           Section 2. This act shall take effect January 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3-20-19

Bill Number (if applicable) SB 1800

Topic Buick's Cores

Amendment Barcode (if applicable)

Name YARI HERBARK

Job Title \_\_\_\_\_

Address 113 East Waverly Ave

Phone 516-9824

City ALLAHOUE State \_\_\_\_\_ Zip 32301

Email Yari.Herbark@sen.state.fl.us

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against   
 (The Chair will read this information into the record.)

Representing Florida Home Builders Assoc

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.   
 This form is part of the public record for this meeting.   
 S-001 (10/14/14)

# THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/20/2019

SB 1800

Meeting Date

Bill Number (if applicable)

Topic Florida Building Code

Amendment Barcode (if applicable)

Name Mike Huey

Job Title Attorney

Address 301 S. Bronough Street

Phone (850) 577-9090

Street  
Tallahassee

FL

32301

Email mike.huey@gray-robinson.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of the American Institute of Architects

Appearing at request of Chair:  Yes  No  Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

Duplicate

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/20/2019

SB 1800

Meeting Date

Bill Number (if applicable)

Topic Florida Building Code

Amendment Barcode (if applicable)

Name Vicki Long

Job Title Executive Vice President, FL Association of the American Institute of Architects

Address 104 East Jefferson Street

Phone (850) 222-7590

Tallahassee

FL

32301

Email vlong@aiafla.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of the American Institute of Architects

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Gibson

6-01088A-19

20191800\_\_

A bill to be entitled

An act relating to the Florida Building Code; amending s. 553.73, F.S.; authorizing the Florida Building Commission to adopt certain triennial amendments; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (7) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(7) (a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. The

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

6-01088A-19

20191800\_\_

commission may approve triennial amendments to the Florida Building Code without a finding that the amendments are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3) (a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 724

INTRODUCER: Community Affairs Committee; and Senators Hooper and Baxley

SUBJECT: Residential Swimming Pool Safety

DATE: March 20, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 724 may be cited as “The Kacen’s Cause Act” and requires that a new residential swimming pool must meet at least two required pool safety feature options in order to pass final inspection and receive a certificate of completion. Current law requires that new residential swimming pools meet just one safety feature. The bill expands the requirements for pool safety features to all existing residential swimming pools by imposing a requirement that a pool owner may not transfer ownership of a parcel that includes a swimming pool unless the pool meets at least two of the pool safety features required by s. 515.27, F.S. The penalty for not complying with the requirements applies to both new pools and transferred parcels with pools.

The bill requires home inspectors to include pool safety features, if any, in written home inspection reports prepared for compensation pursuant to s. 468.8323, F.S.

The bill provides an effective date of October 1, 2019.

**II. Present Situation:**

**Introduction**

In 2000, upon finding that drowning was the leading cause of death of young children in Florida, as well as a significant cause of death for medically frail elderly persons, the Legislature enacted

ch. 515, F.S., the Residential Swimming Pool Safety Act (the act).<sup>1</sup> The act provides that all new residential swimming pools, spas, and hot tubs must be equipped with at least one pool safety feature to protect children under age six, and medically frail elderly persons, defined as those who are at least 65 years of age with a medical problem that affects balance, vision, or judgment.<sup>2</sup>

Using 2017 surveillance data for child drownings in Florida for newborns<sup>3</sup> to age 19, the Florida Department of Health (DOH) indicates the following about children between ages one and four, with such children accounting for:

- Sixty-three percent of the 107 non-fatal hospitalizations from unintentional drowning; and
- Sixty percent of the 101 deaths from unintentional drowning.<sup>4</sup>

The DOH notes that nationally, in 2016, drowning was the leading cause of death of children between ages one and four, and Florida's rate was the highest in the United States.<sup>5</sup> Children between the ages of one and four are more likely to drown in home swimming pools, with older children most likely to drown in natural water bodies.<sup>6</sup>

In May 2018, the United States Consumer Product Safety Commission reported that 85 percent of reported drownings (from 2013 to 2015) of children younger than five years of age involved residential locations.<sup>7</sup> As to children younger than 15 years of age, approximately 54 percent of reported drownings (annual average of 190) occurred in in-ground pools, 19 percent occurred in above-ground pools (annual average of 66), and 4 percent in portable pools (annual average of 14).<sup>8</sup>

In Florida, certain certified pool alarms were added in 2016 as a method to meet the required pool safety features for new residential swimming pools.<sup>9</sup> In addition, the Legislature exempted the following entities, pools, structures, and operations from the requirements of the act:

- Sumps, irrigation canals, or irrigation flood control or drainage works constructed or operated to store, deliver, or distribute water;
- Agricultural stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures;

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<sup>1</sup> See ch. 2000-143, Laws of Fla. (creating ch. 515, F.S., effective Oct. 1, 2000).

<sup>2</sup> Section 515.25, F.S. Such problems include, but are not limited to, a heart condition, diabetes, or Alzheimer's disease or any related disorder.

<sup>3</sup> Most infant drownings occur in bathtubs and buckets. See <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/child-drowning-2017-infographic.pdf> at p. 2 (last visited Mar. 14, 2019).

<sup>4</sup> *Id.* at p. 1

<sup>5</sup> *Id.* Florida's rate was also the highest in the nation in 2013. See <http://www.floridahealth.gov/programs-and-services/prevention/drowning-prevention/index.html> (last visited Mar. 14, 2019).

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> See the U.S. Consumer Product Safety Commission's *Pool or Spa Submersion: Estimated Nonfatal Drowning Injuries and Reported Drownings, 2018 Report* (CPSC 2018 Report), [https://www.cpsc.gov/s3fs-public/Pool\\_Spa\\_Submersion\\_Estimated\\_nonfatal\\_drowning\\_injuries\\_and\\_reported\\_drownings\\_2018\\_report\\_2018H002.pdf?hak4TSK.2PVleeVQeMkFJKJ0BSnoSP4Z](https://www.cpsc.gov/s3fs-public/Pool_Spa_Submersion_Estimated_nonfatal_drowning_injuries_and_reported_drownings_2018_report_2018H002.pdf?hak4TSK.2PVleeVQeMkFJKJ0BSnoSP4Z) (last visited Mar 14, 2019)

<sup>8</sup> *Id.*

<sup>9</sup> See ch. 2016-129, s. 14, Laws of Fla.

- Public swimming pools;<sup>10</sup>
- Any political subdivision that has adopted or adopts a residential pool safety ordinance that is equal to or more stringent than the provisions of the act (ch. 515, F.S.);
- Any portable spa with a safety cover;<sup>11</sup> and
- Small, temporary pools without motors (*i.e.*, kiddie pools).

### Requirements for Pool Safety Features for New Residential Swimming Pools

Section 515.27(1), F.S., provides the requirements a new residential swimming pool must meet in order to pass its final inspection and receive a certification of completion. At least one of the following pool safety features must be in place:

- The pool must be isolated from access to a home by an enclosure that meets certain pool barrier requirements (discussed below);
- The pool must be equipped with an approved safety pool cover;<sup>12</sup>
- All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm with a minimum sound pressure rating of 85 decibels at 10 feet;<sup>13</sup>
- All doors providing access from the home to the pool must have a self-closing, self-latching device, and the release mechanism must be more than 54 inches above the floor; or
- There is a pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water, and the alarm meets and is independently certified to meet safety specifications for residential pool alarms.<sup>14</sup> Personal swimming protection alarm devices (e.g., alarm devices that attach to a child and are triggered if a child exceeds a certain distance or becomes submerged in water), do not meet the pool alarm requirement.

### Residential Swimming Pool Barrier Requirements

The term “barrier” is defined in s. 515.25(2), F.S., to mean a fence, dwelling wall, or nondwelling wall, or any combination, which completely surrounds a swimming pool and obstructs access to the pool, especially access from the residence or from the yard outside the barrier.

<sup>10</sup> Section 515.25(9), F.S., defines “public swimming pool” to mean a swimming pool operated with or without charge for the use of the general public (but not a pool located on the grounds of a private residence), as defined in s. 514.011(2), F.S. For comparison, s. 514.011(3), F.S., defines a “private pool” to mean a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units.

<sup>11</sup> The pool cover must comply with ASTM F1346-91 (Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs), issued by the American Society for Testing and Materials (ASTM). See <https://www.astm.org/Standards/F1346.htm> (last visited Mar. 14, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

<sup>12</sup> An “approved safety pool cover” means a manually or power-operated pool cover that meets all of the standards of the American Society for Testing and Materials, in compliance with standard F1246-91. See s. 515.25(1), F.S.

<sup>13</sup> The exit alarm must make continuous alarm sounds when any door or window with access to the pool area is opened or left ajar; at a level of 85 decibels (85 dbA, using A-weighted sounds), the alarm would sound louder than a passing freight train passing 100 feet away, which has a typical sound level of 80 dbA. See s. 515.25(4), F.S., and [https://www.osha.gov/dts/osta/otm/new\\_noise/index.html#decibels](https://www.osha.gov/dts/osta/otm/new_noise/index.html#decibels) (last visited Mar. 14, 2019).

<sup>14</sup> The alarm must meet and be certified to ASTM Standard F2208, titled “Standard Safety Specification for Residential Pool Alarms” issued by the ASTM. See <https://www.astm.org/Standards/F2208.htm> (last visited Mar. 14, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

Section 515.29(1), F.S., provides a residential swimming pool barrier must:

- Be at least 4 feet high on the outside;
- Not have any gaps or components that could allow a child under the age of six to crawl under, squeeze through, or climb over the barrier;
- Be placed around the pool's perimeter, separate from any fence, wall, or other enclosure surrounding the yard, unless the fence, wall, or other enclosure or any portion on the perimeter of the pool, is being used as part of the barrier, and meets all other barrier requirements; and
- Be placed sufficiently away from the water's edge to prevent a child under the age of six or a medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

Gates that provide access to residential swimming pools must:

- Open outward away from the pool and be self-closing; and
- Be equipped with a self-latching locking device, with a release mechanism on the pool side of the gate, placed that it cannot be reached by a child under the age of six, either over the top or through any opening or gap.<sup>15</sup>

A dwelling wall may be part of barrier if the wall has no door or window opening providing access to the pool, but a barrier may not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.<sup>16</sup>

For an aboveground residential swimming pool, the barrier may be the pool's structure itself or may be mounted on top of the pool's structure, but any such barrier must meet all barrier requirements in s. 515.29, F.S., as described above.<sup>17</sup> In addition, any ladder or steps accessing an aboveground pool must be able to be secured, locked, or removed to prevent access or must themselves be surrounded by a barrier meeting all safety requirements.<sup>18</sup>

### **Penalties for Noncompliance with Requirements for Safety Features for New<sup>19</sup> Residential Swimming Pools**

Section 515.27(2), F.S., provides that a person who fails to equip a new residential swimming pool with at least one of the required pool safety features commits a second degree misdemeanor.<sup>20</sup> No penalty may be imposed if, within 45 days after arrest or issuance of a summons or a notice to appear, the person equips the pool with one of the required safety features and has attended a drowning prevention education program, if such a program is offered within 45 days of the citation.<sup>21</sup>

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<sup>15</sup> Section 515.29(3), F.S.

<sup>16</sup> Sections 515.29(4) and (5), F.S.

<sup>17</sup> Section 515.29(2), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Chapter 2000-143, Laws of Fla., established the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act" with an effective date of October 1, 2000. Penalties apply to residential swimming pools built after that date.

<sup>20</sup> Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>21</sup> *See* s. 515.27(2), F.S.

The drowning prevention education program required by s. 515.31, F.S., was adopted by rule of the DOH in 2001 for persons in violation of the pool safety requirements is the 1995 American Red Cross Community Water Safety Course.<sup>22</sup> An updated course is available from the American Red Cross.<sup>23</sup> The DOH also adopted by rule the 1994 U.S. Consumer Product Safety Commission publication Number 362, Safety Barrier Guidelines for Residential Home Pools.<sup>24</sup>

### **Required Information to be Furnished by Contractors to Buyers who Build a Residential Swimming Pool**

Florida law requires a licensed pool contractor contracting with a buyer to build a residential swimming pool, or a licensed home builder or developer contracting with a buyer to build a house with a swimming pool, to give the buyer:

- A document containing the requirements of the Residential Swimming Pool Safety Act (ch. 515, F.S.); and
- A copy of the publication adopted by the DOH that provides information on drowning prevention and the responsibilities of pool ownership.<sup>25</sup>

### **Required Information in Home Inspection Reports**

A home inspector who has completed a home inspection for compensation from a client must provide a written report stating:

- As to the systems and components that were inspected, those systems and components that are significantly deficient or are near the end of their service lives, in the inspector's professional opinion, and if not obvious, a reason why the system or component is significantly deficient or near the end of its service life.
- Any systems and components that were present at the time of the inspection but were not inspected, and a reason they were not inspected.<sup>26</sup>

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<sup>22</sup> See Fla. Admin. Code R. 64E-21.001 (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> (last visited Feb. 28, 2019).

<sup>23</sup> See <https://www.nspf.org/training> or <https://www.redcross.org/get-help/how-to-prepare-for-emergencies/types-of-emergencies/water-safety/home-pool-safety.html> (last visited Mar. 14, 2019).

<sup>24</sup> See Fla. Admin. Code R. 64E-21.001(2) (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> and <https://www.epsc.gov/s3fs-public/362%20Safety%20Barrier%20Guidelines%20for%20Pools.pdf> (last visited Mar. 14, 2019).

<sup>25</sup> See s. 515.33, F.S. Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code and issue permits. The Orange County Residential Swimming Pool Permit requires a Residential Swimming Pool Safety Affirmation Form signed by both the contractor and property owner designating safety options to be installed before the time of the Pool Barrier/Safety Device inspection, *available at* <https://www.orangecountyfl.net/Portals/0/resource%20library/permits%20-%20licenses/Residential%20Swimming%20Pool%20Safety%20Affirmation.pdf> (last visited Mar. 15, 2019).

<sup>26</sup> See s. 468.8323, F.S. A home inspector is not required to provide estimates for repair costs of an inspected property. Chapter 45 of the Residential Florida Building Code on Private Swimming Pools requires that a final electrical and barrier code inspection must be completed prior to filling the pool with water (R4501.19).

### III. Effect of Proposed Changes:

**Section 1** of the bill provides for the citation of the act as “The Kacen’s Cause Act.” Kacen, a nearly three-year-old boy tragically drowned in the family’s swimming pool after opening a sliding glass door and bypassing an inadequate pool fence. His mother established a nonprofit foundation to educate others and pursue changes to pool safety laws.<sup>27</sup>

**Section 2** amends s. 468.8323, F.S., relating to home inspection reports, to require the reporting of any existing pool safety features, as described in s. 515.27(1), F.S., if there is a swimming pool at the home.

**Section 3** amends s. 515.27, F.S., relating to residential pool safety features, to increase the minimum number of required pool safety features for such pools from one to two. The bill expands the requirements for pool safety features to all residential swimming pools by providing that a residential swimming pool owner may not transfer ownership of a parcel with a pool unless the pool meets at least two of the required safety features. A possible noncriminal violation penalty for noncompliance with the requirements applies to both new and transferred parcels with pools. A possible imprisonment penalty for noncompliance with the requirements is removed.

**Section 4** amends cross-references to conform to changes in the bill.

The bill includes technical conforming provisions to meet bill drafting conventions.

The bill provides an effective date of October 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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<sup>27</sup> See <https://www.kacenscause.com/> (last visited Feb. 28, 2019), which notes the term “K.A.C.E.N.S. C.A.U.S.E.” stands for “Keeping Adults and Children Educated Nationwide: Creating Awareness on Unsafe Swimming Environments.”

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the requirements of the bill, an owner of a residential property must specify in the construction plans for a swimming pool that the project must include at least two pool safety features in order to pass inspection (rather than one), which may increase construction costs.

An owner of an existing residential property with a swimming pool must ensure that there are at least two of the required pool safety features in place before transferring ownership of the property, to avoid delayed or failed transfers, and penalties for noncompliance. Compliance with the required pool safety features will increase the cost to affected owners of properties for sale. Realtors and others involved with the transfer of properties may also need to include the requirements for pool safety features imposed by the bill in procedures and requirements for real estate closings.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.8323, 515.27, and 515.31.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on March 20, 2019:**

- Clarifies that swimming pool safety features are required on a transferred parcel with a pool.
- Removes a misdemeanor of the second degree imprisonment penalty option for not having the required pool safety features.
- References the second degree misdemeanor fine penalty as a noncriminal violation. and specifies that it applies to transferred parcels with pools in addition to new pools
- Provides an effective date of October 1, 2019.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 60 - 93

and insert:

(2) A property owner may not transfer, for consideration, ownership of a parcel that includes a swimming pool unless the swimming pool meets at least two of the requirements under subsection (1).

(3)~~(2)~~ A person who fails to equip a ~~new~~ residential swimming pool with at least two ~~one~~ pool safety features ~~feature~~



707110

11 as required in subsection (1) or subsection (2) commits a  
12 noncriminal violation ~~misdemeanor of the second degree,~~  
13 punishable as provided in ~~s. 775.082 or~~ s. 775.083, except that  
14 a penalty may not ~~no penalty shall~~ be imposed if the person,  
15 within 45 days after ~~arrest or~~ issuance of a citation ~~summons or~~  
16 ~~a notice to appear,~~ has equipped the pool with at least two ~~one~~  
17 safety features ~~feature~~ as required in subsection (1) or  
18 subsection (2) and has attended a drowning prevention education  
19 program established by s. 515.31. However, the requirement of  
20 attending a drowning prevention education program is waived if  
21 such program is not offered within 45 days after issuance of the  
22 citation.

23 Section 4. Subsection (1) of section 515.31, Florida  
24 Statutes, is amended to read:

25 515.31 Drowning prevention education program; public  
26 information publication.—

27 (1) The department shall develop a drowning prevention  
28 education program, which shall be made available to the public  
29 at the state and local levels and which shall be required as set  
30 forth in s. 515.27(3) ~~s. 515.27(2)~~ for persons in violation of  
31 the pool safety requirements of this chapter. The department may  
32 charge a fee, not to exceed \$100, for attendance at such a  
33 program. The drowning prevention education program shall be  
34 funded using fee proceeds, state funds appropriated for such  
35 purpose, and grants. The department, in lieu of developing its  
36 own program, may adopt a nationally recognized drowning  
37 prevention education program to be approved for use in local  
38 safety education programs, as provided in rule of the  
39 department.



707110

40           Section 5. This act shall take effect October 1, 2019.

41

42 ===== T I T L E   A M E N D M E N T =====

43 And the title is amended as follows:

44           Delete lines 10 - 13

45 and insert:

46           property owner from transferring ownership of a parcel  
47           that includes a swimming pool unless certain  
48           requirements are met; providing civil penalties rather  
49           than criminal penalties; amending s. 515.31, F.S.;  
50           conforming

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/14

Meeting Date

Bill Number (if applicable) SB 724

Amendment Barcode (if applicable)

Topic Pool Safety

Name Scott Fannery

Job Title

Address

Street

City

State

Zip

Phone

Email Scott@Floridaig.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida

MCA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3-20-19

Meeting Date

Bill Number (if applicable) SB 724

Amendment Barcode (if applicable) 70711D

Topic KACENS CAUSE ACT

Name BRITANNY HOWARD

Job Title FOUNDER KACENS CAUSE INC

Address 1110 LAFAYETTE BLVD

Street

City OLDSMAR State FL Zip 34677

State

Zip

Phone 727-339-9940

Email BRITANNYHOWARD@HOTMAIL.COM

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing KACENS CAUSE INC

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

Duplicate

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3-20-19

SB 724

Topic KITCHENS CAUSE FACT

Bill Number (if applicable)

707110

Amendment Barcode (if applicable)

Name Seremy Howard

Job Title —

Address 610 Lafayette Blvd.

Phone 727-458-8034

City Oldsmar State Fl. Zip 34677

Email Seremyj0115@hotmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing KITCHENS CAUSE INC.

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 3/20/19

SB 724  
Bill Number (if applicable)  
70710

Topic Residential Rod Safety

Amendment Barcode (if applicable)

Name April Phillips

Job Title Vice President, Kacen's Cause

Address 17436 Isbell Ln

Phone 727-744-9951

City Odessa State FL Zip 33556

Email aprilphillips@kacenscause.com

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Kacen's Cause Inc.

Appearing at request of Chair:  Yes  No  Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Hooper

16-01014A-19

2019724\_\_

A bill to be entitled

An act relating to residential swimming pool safety; providing a short title; amending s. 468.8323, F.S.; requiring a home inspector to include certain information relating to swimming pools in his or her report; amending s. 515.27, F.S.; requiring that new residential swimming pools meet an additional requirement in order to pass final inspection and receive a certificate of completion; prohibiting a swimming pool owner from transferring ownership of a swimming pool unless certain requirements are met; revising criminal penalties relating to swimming pool safety features; amending s. 515.31, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. This act may be cited as "The Kacen's Cause Act."

Section 2. Paragraph (d) is added to subsection (1) of section 468.8323, Florida Statutes, to read:

468.8323 Home inspection report.—Upon completion of each home inspection for compensation, the home inspector shall provide a written report prepared for the client.

(1) The home inspector shall report:

(d) If there is a swimming pool, as defined in s. 515.25, any safety features, as described in s. 515.27(1), which are present.

Section 3. Section 515.27, Florida Statutes, is amended to

Page 1 of 4

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

16-01014A-19

2019724\_\_

read:

515.27 Residential swimming pool safety feature options; penalties.—

(1) In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet at least ~~two~~ one of the following requirements relating to pool safety features:

(a) The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of s. 515.29.~~†~~

(b) The pool must be equipped with an approved safety pool cover.~~†~~

(c) All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet.~~†~~

(d) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.~~†~~~~or~~

(e) A swimming pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water. Such pool alarm must meet and be independently certified to ASTM Standard F2208, titled "Standard Safety Specification for Residential Pool Alarms," which includes surface motion, pressure, sonar, laser, and infrared alarms. For purposes of this paragraph, the term "swimming pool alarm" does not include any swimming protection alarm device designed for individual use, such as an alarm attached to a child that sounds when the child exceeds a certain distance or

Page 2 of 4

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

16-01014A-19

2019724\_\_

59 becomes submerged in water.

60 (2) A swimming pool owner may not transfer ownership of a  
 61 swimming pool unless the swimming pool meets at least two of the  
 62 requirements under subsection (1).

63 ~~(3)(2)~~ A person who fails to equip a new residential  
 64 swimming pool with at least two ~~one~~ pool safety features ~~feature~~  
 65 as required in subsection (1) commits a misdemeanor of the  
 66 second degree, punishable as provided in s. 775.082 or s.  
 67 775.083, except that a penalty may not ~~no penalty shall be~~  
 68 imposed if the person, within 45 days after arrest or issuance  
 69 of a summons or a notice to appear, has equipped the pool with  
 70 at least two ~~one~~ safety features ~~feature~~ as required in  
 71 subsection (1) and has attended a drowning prevention education  
 72 program established by s. 515.31. However, the requirement of  
 73 attending a drowning prevention education program is waived if  
 74 such program is not offered within 45 days after issuance of the  
 75 citation.

76 Section 4. Subsection (1) of section 515.31, Florida  
 77 Statutes, is amended to read:

78 515.31 Drowning prevention education program; public  
 79 information publication.—

80 (1) The department shall develop a drowning prevention  
 81 education program, which shall be made available to the public  
 82 at the state and local levels and which shall be required as set  
 83 forth in s. 515.27(3) ~~s. 515.27(2)~~ for persons in violation of  
 84 the pool safety requirements of this chapter. The department may  
 85 charge a fee, not to exceed \$100, for attendance at such a  
 86 program. The drowning prevention education program shall be  
 87 funded using fee proceeds, state funds appropriated for such

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

16-01014A-19

2019724\_\_

88 purpose, and grants. The department, in lieu of developing its  
 89 own program, may adopt a nationally recognized drowning  
 90 prevention education program to be approved for use in local  
 91 safety education programs, as provided in rule of the  
 92 department.

93 Section 5. This act shall take effect July 1, 2019.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: CS/SB 1004

INTRODUCER: Community Affairs Committee and Senator Rodriguez

SUBJECT: Regional Planning Council Meetings

DATE: March 20, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Fav/CS
2.			IS	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1004 provides requirements for establishing a quorum for meetings of regional planning councils when a voting member appears via telephone, real-time video conferencing, or similar real-time electronic or video communication.

**II. Present Situation:**

**Open Meetings Law**

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>1</sup> Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.<sup>2</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>3</sup>

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<sup>1</sup> FLA CONST., art. I, s. 24(b).

<sup>2</sup> *Id.*

<sup>3</sup> FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”<sup>4</sup> or the “Sunshine Law,”<sup>5</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.<sup>6</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>7</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>8</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>9</sup> Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.<sup>10</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>11</sup>

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.<sup>12</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>13</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>14</sup>

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.<sup>15</sup>

### **Administrative Procedure Act**

The Administrative Procedure Act (APA)<sup>16</sup> outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen

---

<sup>4</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>5</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>6</sup> Section 286.011(1)-(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 286.011(6), F.S.

<sup>9</sup> Section 286.011(2), F.S.

<sup>10</sup> Section 286.011(1), F.S.

<sup>11</sup> Section 286.011(3), F.S.

<sup>12</sup> FLA CONST., art. I, s. 24(c).

<sup>13</sup> *Id.*

<sup>14</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>15</sup> Section 286.0113, F.S.

<sup>16</sup> See ch. 120, F.S.

involvement. The process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision.<sup>17</sup>

The term "agency" is defined in s. 120.52(1), F.S., as:

- The Governor, each state officer and state department, and each departmental unit described in s. 20.04, F.S.;<sup>18</sup>
- The Board of Governors of the State University System;
- The Commission on Ethics;
- The Fish and Wildlife Conservation Commission;
- A regional water supply authority;
- A regional planning agency;
- A multicounty special district, but only if a majority of its governing board is comprised of non-elected persons;
- Educational units;
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.;
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; and
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>19</sup>

### *Use of Electronic Media and Public Meetings*

Section 120.54(5)(b)2, F.S., requires the Administration Commission<sup>20</sup> to promulgate rules to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings or workshops, including procedures for conducting meetings in person and by means of communications media technology.<sup>21</sup> The agency must state in the notice that the public meeting, hearing, or workshop will be conducted by means of communications media technology, or if attendance may be provided by such means.<sup>22</sup> The notice must also state how individuals interested in attending may do so.<sup>23</sup> Notwithstanding the use of electronic media technology, all evidence, testimony, and argument presented at the public meeting must be afforded equal consideration, regardless of the method of communication.<sup>24</sup> In addition to agencies required to comply with ch. 120, F.S., certain entities created by an interlocal

<sup>17</sup> See Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited March 15, 2019).

<sup>18</sup> Section 20.04, F.S., specifies the structure of the executive branch of state government.

<sup>19</sup> The definition of agency does not include a municipality or legal entity created solely by a municipality and expressly excludes certain legal entities or organizations found in chs. 343, 348 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>20</sup> Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

<sup>21</sup> Section 120.54(5)(b)2, F.S. The term "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

agreement may conduct public meetings and workshops via communications media technology.<sup>25</sup>

While current law allows state agencies and certain entities created by an interlocal agreement to conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same fashion.<sup>26</sup> The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings via electronic means.<sup>27</sup> The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules that apply to state agencies.<sup>28</sup> The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."<sup>29</sup> The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local thus, "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."<sup>30</sup> However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.<sup>31</sup>

### **Florida Regional Planning Councils**

The Florida Regional Planning Council Act<sup>32</sup> allows the creation of regional planning councils (RPC). The Legislature has recognized RPCs as the "only multipurpose regional entity that is in position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than local issues, provide technical assistance to local governments, and meet other needs of the communities in each region."<sup>33</sup> RPCs span multiple counties within the geographical boundaries of any one comprehensive planning district.<sup>34</sup> The voting membership of a RPC must consist of representatives living within the geographical area covered by the council.<sup>35</sup> The ten RPCs are as follows: West Florida, Apalachee, North Central Florida, Northeast Florida, East Central Florida, Tampa Bay, Central Florida, Southwest Florida, Treasure Coast, and South

---

<sup>25</sup> Section 163.01(18), F.S. (Allowing public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology).

<sup>26</sup> Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

<sup>27</sup> Op. Att'y Gen. Fla. 98-28 (1998).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Section 186.501–186.513, F.S.

<sup>33</sup> Section 186.502(4), F.S.

<sup>34</sup> Section 186.504, F.S.

<sup>35</sup> Section 186.504(2), F.S.

Florida.<sup>36</sup> Each RPC consists of anywhere from 3 (South Florida) to 12 Counties (North Central Florida).<sup>37</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 120.525, F.S., to authorize the use of communication media technology for board meetings of RPCs that cover three or more counties. Specifically, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of such RPC are physically present at the meeting location.

The bill also requires the member to provide oral, written, or electronic notice of his or her intent to appear via communications media technology to their respective planning council at least 24 hours before the scheduled meeting.

**Section 2** provides the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

---

<sup>36</sup> Section 186.512, F.S.

<sup>37</sup> *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

Authorizing RPCs to use media technology for quorum purposes may save on travel time and cost.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 120.525 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on March 20, 2019:**

The committee substitute removes references to “regional agencies” in the bill.

B. Amendments:

None.



237962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
	.	
	.	
	.	

---

The Committee on Community Affairs (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (4) is added to section 120.525,  
Florida Statutes, to read:

120.525 Meetings, hearings, and workshops.-

(4) For purposes of establishing a quorum at meetings of  
regional planning councils that cover three or more counties, a  
voting member who appears via telephone, real-time



237962

11 videoconferencing, or similar real-time electronic or video  
12 communication that is broadcast publicly at the meeting location  
13 may be counted towards the quorum requirement if at least one-  
14 third of the voting members of such regional planning council  
15 are physically present at the meeting location. A member must  
16 provide oral, written, or electronic notice of his or her intent  
17 to appear via telephone, real-time videoconferencing, or similar  
18 real-time electronic or video communication to the regional  
19 planning council at least 24 hours before the scheduled meeting.

20 Section 2. This act shall take effect July 1, 2019.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause  
25 and insert:

26 A bill to be entitled

27 An act relating to regional planning council meetings;  
28 amending s. 120.525, F.S.; providing requirements for  
29 establishing a quorum for meetings of certain councils  
30 when a voting member appears via telephone, real-time  
31 videoconferencing, or similar real-time electronic or  
32 video communication; requiring notice of intent to  
33 appear via telephone, real-time videoconferencing, or  
34 similar real-time electronic or video communication by  
35 a specified time; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-20-19

1004

Meeting Date

Bill Number (if applicable)

Topic Regional Agency / Regional Planning Councils Amendment Barcode (if applicable)  
Name RAMA BROWN meetings

Job Title consultant

Address 104 W. Jefferson St Phone 850 2243427

City Tallahassee State FL Zip 32301 Email RAMA@RLBOKPA.com

Speaking:  For  Against  Information  Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Regional Councils Assoc.

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Rodriguez

37-00232-19

20191004\_\_

A bill to be entitled

An act relating to regional agency and regional planning council meetings; amending s. 120.525, F.S.; providing requirements for establishing a quorum for meetings of certain agencies and councils when a voting member appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication; requiring notice of intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication by a specified time; providing an effective date.

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

Section 1. Subsection (4) is added to section 120.525, Florida Statutes, to read:

120.525 Meetings, hearings, and workshops.—

(4) For purposes of establishing a quorum at meetings of regional agencies and of regional planning councils that cover three or more counties, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of such regional agency or regional planning council are physically present at the meeting location. A member must provide oral, written, or electronic notice of his or her intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication to the regional agency or

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

37-00232-19

20191004\_\_

regional planning council at least 24 hours before the scheduled meeting.

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: SB 1490

INTRODUCER: Senators Simmons and Baxley

SUBJECT: First Responder Property Tax Exemption

DATE: March 14, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Favorable</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 1490 allows certain of out-of-state disabled first responders to qualify for the full homestead property tax exemption currently afforded to first responders who sustain a disability in the line of duty in Florida. Specifically, the bill allows a law enforcement officer or a firefighter who, prior to residing in Florida, was employed in another state as a law enforcement officer or firefighter and a sustained total and permanent disability while serving in in the line of duty, to qualify for the first responder homestead exemption in s. 196.102, F.S.

The homestead exemption authorized in the bill applies beginning with the 2020 tax roll.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> See s. 192.001(2) and (16), F.S.

each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The Florida Constitution prohibits the state from levying ad valorem taxes,<sup>4</sup> and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### **Homestead Exemption for Totally and Permanently Disabled First Responders**

In November of 2016, Florida voters authorized the Legislature to provide a homestead property tax exemption to a first responder (law enforcement officer, correctional officer, firefighter, emergency medical technician, or paramedic) who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty.<sup>11</sup> This constitutional provision is implemented in s. 196.102, F.S., and provides a full homestead exemption to such a first responder if the person is a permanent resident of Florida on January 1 of the year for which the exemption is claimed.<sup>12</sup> Exemption applicants must have a total and permanent disability<sup>13</sup> as a result of an injury or injuries sustained in the line of duty while serving as a first responder in Florida, or during an operation in another state or country authorized by the state of Florida or a political subdivision of the state.<sup>14</sup>

For the purposes of implementing the exemption, "first responder" means a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer.<sup>15</sup>

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<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> FLA. CONST. art. VII, s. 6(f)(3).

<sup>12</sup> Section 196.102(2), F.S.

<sup>13</sup> "Total and permanent disability" means an impairment of the mind or body that renders a first responder unable to engage in any substantial gainful occupation and that is reasonably certain to continue throughout his or her life.

<sup>14</sup> Section 196.102(2), F.S.

<sup>15</sup> Section 196.102(1)(b), F.S., references the definition of "first responder" in s. 196.081, F.S., which provides a homestead exemption for the surviving spouse of a first responder who died in the line of duty.

The Florida Constitution defines “in the line of duty” as arising out of and in the actual performance of duty required by employment as a first responder.<sup>16</sup> This phrase is further defined in Florida Statutes to include:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.<sup>17</sup>

In determining eligibility for the property tax exemption, the causal connection between a disability and service in the line of duty shall not be presumed, and that disability does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.<sup>18</sup> Proof of disability is required in the form of a letter from the Social Security Administration and one Florida certified physician statement.<sup>19</sup> If an individual is not eligible for a medical status determination from the Social Security Administration, they may complete two Florida certified physician’s statements.<sup>20</sup> In addition, applicants for this exemption must submit a certificate of injury from the organization that employed them at the time their injury or injuries occurred.<sup>21</sup> The property tax exemption carries over to the benefit of the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides on the homestead, and does not remarry.<sup>22</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 196.102, F.S., to provide a full homestead exemption to an individual who before becoming a resident of Florida was employed as law enforcement officer or firefighter in another state and sustained a total and permanent disability in the line of duty. For this purpose, the bill defines “law enforcement officer” as a person who was employed full time by a municipality of another state, by another state, or by any political subdivision thereof; who was vested with the authority to bear arms and make arrests; and whose primary responsibility was the prevention or detection of crime or the enforcement of penal, criminal, traffic or highway laws of the previous state.<sup>23</sup>

<sup>16</sup> FLA. CONST. art. VII, s. 6(f).

<sup>17</sup> Section 196.081(6)(c)2.a.-h., F.S.

<sup>18</sup> FLA. CONST. art. VII, s. 6(f)(3).

<sup>19</sup> Section 196.102(5), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Additional requirements exist for applicants who have a total and permanent disability resulting from a cardiac event that occurred while in the line of duty. *See* s. 196.102(6), F.S.

<sup>22</sup> Section 196.102(8), F.S.

<sup>23</sup> This definition of “law enforcement officer” parallels that found in s. 943.10, F.S.

The bill also restates verbatim the definition of “first responder” provided in s. 196.081, F.S., to determine eligibility for the existing homestead exemption for in-state totally and permanently disabled first responders. This change has no impact.

All provisions in s. 196.102, F.S., governing the existing homestead exemption for in-state totally and permanently disabled first responders apply to the exemption authorized in the bill.

**Section 2** states that the bill’s provisions apply beginning with the 2020 tax roll.

**Section 3** provides an effective date of July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.  
<sup>24,25,26</sup>

The mandates provision of section 18, Article VII, of the Florida Constitution, may apply because the bill would increase the number of persons eligible for the disabled first responder property tax exemption. To the extent this occurs, this bill would reduce local government authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>24</sup> FLA. CONST. art. VII, s. 18(d).

<sup>25</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 14, 2019).

<sup>26</sup> Based on the Florida Demographic Estimating Conference’s February 6, 2019 population forecast for 2019 of 21,184,532. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 14, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of SB 1490.

B. Private Sector Impact:

Specified homestead owners who were totally and permanently disabled in the line of duty as a law enforcement officer or firefighter in another state prior to residing in Florida will pay less property taxes.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 196.102 of the Florida Statutes.

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Simmons

9-00612A-19

20191490\_\_

1 A bill to be entitled  
 2 An act relating to a first responder property tax  
 3 exemption; amending s. 196.102, F.S.; revising the  
 4 definition of the term "first responder," for purposes  
 5 of the tax exemption, to include law enforcement  
 6 officers and firefighters who sustained a total and  
 7 permanent disability in the line of duty while serving  
 8 as full-time paid employees in another state; defining  
 9 the term "law enforcement officer"; providing  
 10 applicability; providing an effective date.

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

14 Section 1. Paragraph (b) of subsection (1) and subsection  
 15 (2) of section 196.102, Florida Statutes, are amended to read:

16 196.102 Exemption for certain totally and permanently  
 17 disabled first responders; surviving spouse carryover.—

18 (1) As used in this section, the term:

19 (b) "First responder" means either of the following:

20 1. A law enforcement officer or correctional officer as  
 21 defined in s. 943.10, a firefighter as defined in s. 633.102, or  
 22 an emergency medical technician or paramedic as defined in s.  
 23 401.23 who is a full-time paid employee, part-time paid  
 24 employee, or unpaid volunteer.

25 2. A law enforcement officer or firefighter who, before  
 26 becoming a resident of this state, sustained a total and  
 27 permanent disability in the line of duty while serving as a  
 28 full-time paid law enforcement officer or firefighter in another  
 29 state. As used in this subparagraph, the term "law enforcement

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

9-00612A-19

20191490\_\_

30 officer" means a person who was employed full time by a  
 31 municipality of another state, by another state, or by any  
 32 political subdivision thereof; who was vested with authority to  
 33 bear arms and make arrests; and whose primary responsibility was  
 34 the prevention and detection of crime or the enforcement of the  
 35 penal, criminal, traffic, or highway laws of that state ~~has the~~  
 36 ~~same meaning as in s. 196.001.~~

37 (2) Any real estate that is owned and used as a homestead  
 38 by a person who has a total and permanent disability as a result  
 39 of an injury or injuries sustained in the line of duty while  
 40 serving as a first responder in this state, in another state as  
 41 provided under subparagraph (1)(b)2., or during an operation in  
 42 another state or country authorized by this state or a political  
 43 subdivision of this state is exempt from taxation if the first  
 44 responder is a permanent resident of this state on January 1 of  
 45 the year for which the exemption is being claimed.

46 Section 2. The amendment to s. 196.102, Florida Statutes,  
 47 made by this act applies beginning with the 2020 tax roll.

48 Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Community Affairs

**Case No.:**  
**Judge:**

**Type:**

**Started:** 3/20/2019 4:05:10 PM  
**Ends:** 3/20/2019 4:46:39 PM **Length:** 00:41:30

4:05:12 PM Chair Flores call meeting to order and ask Shirlyne to call the roll  
4:05:27 PM Roll call by Shirlyne  
4:05:43 PM Chair Flores ask members to turn to TAB 5 SB 1800 by Senator Gibson  
4:06:22 PM Senator Gibson explains the SB 1800  
4:07:23 PM Chair Flores stated we have a late filed amendment barcode 440776 by Senator Gibson  
4:07:48 PM Senator Gibson explains the amendment  
4:07:59 PM Chair Flores asked were there any questions or debate on the amendment  
4:08:20 PM Chair Flores stated we have speaker cards  
4:08:48 PM Mike Huey, Attorney, FL Association of the American Institute of Architects Speaking for the bill  
4:08:53 PM Vicki Long Association of the American Institute of Architects, Speaking for the bill  
4:08:58 PM Kari Hebrank, FL Home Builders Assoc.  
4:09:00 PM Chair Flores ask Senator Gibson to close on SB 1800  
4:09:04 PM Senator Gibson waives closing  
4:09:13 PM Chair Flores asked Shirlyne to call the roll on SB 1800  
4:09:23 PM Shirlyne called the roll CS/SB 1800  
4:09:25 PM Chair Flores stated the CS/SB 1800 passes  
4:09:27 PM Chair Flores ask members to turn to TAB 8 - SB 1490 by Senator Simmons  
4:09:42 PM Senator Simmons explains SB 1490  
4:11:48 PM Chair Flores ask for questions on SB 1490  
4:12:00 PM Chair Flores stated there are no appearance cards  
4:12:05 PM Chair Flores ask was there any debate, no debate  
4:12:09 PM Senator Simmons waives closing  
4:12:19 PM Chair Flores ask Shirlyne to call the roll on SB 1490  
4:12:21 PM Shirlyne called roll on SB 1490  
4:12:29 PM Chair Flores stated the SB 1490 passes  
4:12:46 PM Chair Flores ask members to turn to TAB 1 - SB 1730 by Senator Lee  
4:13:00 PM Chair Flores stated we have an amendment barcode 191038 by Senator Lee  
4:13:07 PM Senator Lee explains amendment barcdode 191038  
4:13:21 PM Chair Flores ask were there any debate on the amendment  
4:16:43 PM Chair Flores ask were there any questions on the amendment  
4:16:56 PM Senator Pizzo ask question on the amendment  
4:19:09 PM Chair Flores made a statement regarding the amendment  
4:19:24 PM Senator Pizzo ask another question  
4:19:32 PM Senator Lee answer  
4:20:25 PM Chair Flores ask for more questions  
4:20:37 PM Senator Farmer ask a question and made a statement  
4:22:23 PM Senator Lee answer question  
4:26:21 PM Chair Flores ask for more questions  
4:26:34 PM Chair Flores stated the amendment is adopted  
4:26:38 PM Chair Flores ask for speaker cards  
4:26:41 PM Edward Briggs, Highland Homes, waive in support of the bill

4:26:44 PM Kari Hebrank speaking for the bill, FL Home Builders Assc.  
4:29:18 PM Chair Flores ask was there any questions  
4:31:34 PM Senator Pizzo ask a question  
4:31:44 PM Ms. Hebrank answer  
4:32:24 PM Chair Flores call Mr. Hawkins speaking against  
4:32:46 PM Mr Thomas Hawkins speaking against the bill  
4:33:54 PM Chair Flores called Mr. Eric Poole waive against  
4:34:01 PM Chair Flores called Mr. Jeff Branch speaking  
4:34:29 PM Mr. Jeff Branch, FL League of Cities is speaking  
4:34:44 PM Chair Flores called Mr. Gary Hunter waiver in support  
4:35:01 PM Chair Flores called Mr. Brewser Bevis, Assoc. Industries of FL, in support  
4:35:05 PM Chair Flores called Amanda Gill, FL Apartment Assoc.  
4:35:17 PM Ms. Gill speaking for the bill  
4:36:45 PM Chair Flores called Ms. DeLarosa  
4:36:48 PM Ms. Rebecca DeLarosa speaking  
4:37:31 PM Chair Flores called Mr. Bryan  
4:37:33 PM Mr. Roget Bryan speaking against  
4:38:56 PM Chair Flores stated we are back on the bill as amended ask for a debate  
4:39:10 PM Senator Pizzo on debate  
4:41:48 PM Chair Flores ask for more debate  
4:41:54 PM Senator Farmer on debate  
4:43:55 PM Chair Flores ask Senator Lee for closing remarks  
4:44:10 PM Senator Lee closing remarks  
4:44:52 PM Chair Flores ask Shirlyne to call the roll on CS/SB 1730  
4:45:15 PM Shirlyne call roll on CS/SB 1730  
4:45:24 PM The bill passes

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Community Affairs

**Case No.:**  
**Judge:**

**Type:**

**Started:** 3/20/2019 4:46:57 PM  
**Ends:** 3/20/2019 4:49:17 PM **Length:** 00:02:21

**4:46:56 PM** Chair Flores ask members to turn to TAB 7 SB 1004 by Senator Rodriguez  
**4:47:27 PM** Senator Rodriguez ask could he go to the Amendment barcode 237962  
**4:47:29 PM** Chair Flores stated we can go to Amendment barcode 237962  
**4:47:56 PM** Senator Rodriguez explain the amendment and the bill  
**4:48:17 PM** Chair Flores ask for questions on the amendment  
**4:48:21 PM** Senate Pizzo ask a question  
**4:48:23 PM** Chair Flores stated go ahead  
**4:48:28 PM** Senate Pizzo stated no question  
**4:48:30 PM** Chair Flores stated without no objection the amendment is adopted.  
**4:48:32 PM** Chair Flores stated we have speaker cards  
**4:48:38 PM** Ms. Rana Brown wavier in support  
**4:48:42 PM** Chair Flores ask for further questions or debate on the bill as amended.  
**4:48:46 PM** Senator Rodriguez waive closing  
**4:48:49 PM** Chair Flores ask Shirleyne to call the roll on CS/SB 1004.  
**4:48:57 PM** Shirleyne call roll on CS/SB 1004  
**4:48:59 PM** Chair Flores stated by your vote CS/SB 1004 passes.

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Community Affairs

**Case No.:**  
**Judge:**

**Type:**

**Started:** 3/20/2019 4:54:07 PM  
**Ends:** 3/20/2019 5:18:22 PM **Length:** 00:24:16

4:54:10 PM Chair Flores ask members to turn to TAB 3 SB 1244 by Senator Wright  
4:54:24 PM Senator Wright explains the bill  
4:54:50 PM Chair Flores ask for questions  
4:55:02 PM Chair Flores stated we have some appearance cards, Mr. Demetrius Minor  
4:55:03 PM Demetrius Minor waiving in support  
4:55:12 PM Chair Flores stated we have Ms. Cheryl Stuart, Assoc. of FL Community Developers  
4:55:15 PM Ms. Cheryl Stuart speaking against the bill  
4:56:10 PM Chair Flores ask for questions to the speaker  
4:56:18 PM Senator Pizzo ask questions  
4:56:27 PM Ms. Stuart answer  
4:58:11 PM Chair Flores ask for more questions or debates  
4:58:28 PM Senator Broxson ask a question  
4:58:39 PM Senator Wright answer question  
4:59:32 PM Chair Flores speaking  
4:59:57 PM Senator Pizzo speaking  
5:00:30 PM Chair Flores ask Senator Wright to close on the bill  
5:00:41 PM Senator Wright closing on SB 1244  
5:00:51 PM Chair Flores ask Shirlyne for roll called on SB 1244  
5:00:56 PM Shirlyne call roll on SB 1244  
5:01:07 PM Chair Flores stated by your vote show SB 1244 passing.  
5:01:11 PM Chair Flores ask members to turn to TAB 2 SB 380 by Senator Brandes  
5:01:27 PM Senator Brandes explains the bill  
5:01:40 PM Chair Flores ask for questions  
5:01:49 PM Senator Pizzo ask a question  
5:01:55 PM Senator Brandes answer  
5:02:00 PM Chair Flores make statement/ask question regarding the SB 380  
5:02:31 PM Senator Brands answer question  
5:02:53 PM Chair Flores ask for apprarance cards  
5:03:15 PM Mr. Cartlin Murray waive in support  
5:03:18 PM Ms. Lisa Miller waive in support  
5:03:24 PM Senator Brox making statement  
5:03:44 PM Chair Flores ask for debate  
5:03:47 PM Chair Flores ask Senator Brandes to close on CS/SB 380  
5:03:50 PM Senatr Brandes closes on CS/SB 380.  
5:04:07 PM Chair Flores ask Shirlyn to call roll on CS/SB 380.  
5:04:13 PM Shirlyne call roll on CS/SB 380  
5:04:15 PM Chair Flores stated by your vote CS/SB 380 passes  
5:04:25 PM Chair Flores ask members to turn to TAB 6 SB 724 by Senator Hooper  
5:04:36 PM Senator Hooper explains SB 724  
5:05:55 PM Chair Flores ask for question on the bill  
5:06:04 PM Chair Flores stated we have an amendment barcode 707110 by Senator Hooper  
5:06:15 PM Senator Hooper explain the amendment

**5:06:25 PM** Chair Flores ask for questions on the amendment no questions  
**5:06:27 PM** Chair Flores stated we have appearance cards  
**5:06:37 PM** Mr. Jeremy Howard, Kacens Cause, Inc., waive in support of the amendment  
**5:06:57 PM** Ms. April Phillips, Kacen's Cause, Inc., speaking for the amendment  
**5:11:55 PM** Ms. Brittany Howard waiving in support of the amendment  
**5:11:57 PM** Chair Flores stated is there any objection to the amendment  
**5:12:00 PM** Chair Flores stated the amendment is adopted  
**5:12:16 PM** Mr. Scott Fahrney, FL YMCAs waive in support of the bill  
**5:12:27 PM** Chair Flores ask for debate  
**5:12:34 PM** Senator Pizzo speaking  
**5:12:53 PM** Chair Flores ask for further debate on the bill and give some remarks  
**5:13:12 PM** Senator Hooper closing on CS/SB 724.  
**5:14:31 PM** Chair Flores ask for Shirlyne to call roll on CS for SB 724  
**5:14:38 PM** Shirlyne call the roll on CS for SB 724  
**5:14:40 PM** Chair Flores stated the bill passes  
**5:14:50 PM** Chair Flores ask members to turn to TAB 4 SB 710 by Senator Baxley  
**5:15:09 PM** Senator Baxley explain the bill  
**5:15:44 PM** Chair Flores said their is an amendment barcode 166472 by Senator Baxley  
**5:16:02 PM** Senator Baxley explain the amendment  
**5:16:18 PM** Chair Flores ask for questions on the amendment  
**5:16:55 PM** Chair Flores stated the amendment is adopted  
**5:16:58 PM** Chair Flores ask for appearance cards  
**5:17:05 PM** Mr. Albert Balido, FL Assoc. of Property Appraisers waive in support  
**5:17:11 PM** Chair Flores ask for debate on the bill as amended  
**5:17:21 PM** Chair Flores ask for roll Shirlyne to call roll on CS for SB 710  
**5:17:26 PM** Shirlyne call roll on CS for SB 710  
**5:17:37 PM** Chair Flores ask for motions  
**5:17:41 PM** Senator Simmons ask to be shown voting YEA for SB I004, SB 1244,and SB 380  
**5:18:09 PM** Senator Farmer, Vice Chair move we adjourned.