

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/HB 829 — Attorney Fees and Costs

by Judiciary Committee; Local, Federal and Veterans Affairs Subcommittee; Civil Justice Subcommittee; and Rep. Sabatini and others (CS/CS/CS/SB 1140 by Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Hutson)

The bill authorizes an award of attorney fees and costs in challenges to proposed or adopted local government ordinances on subjects that are expressly preempted by the State Constitution or state law. Express preemption means that a particular topic or field is reserved in writing exclusively to the Legislature to regulate.

Under the bill, the prevailing party, or winning party, in a court challenge to a local ordinance on express preemption grounds is entitled to attorney fees and costs. This is an exception to the usual rule on attorney fees in Florida, which requires that each party to a legal action pay its own attorney fees and costs.

However, the bill also provides an “escape clause” from liability for the prevailing party’s attorney fees and costs. The “escape clause” provides that, upon receiving a written claim that a current or proposed/noticed ordinance is expressly preempted, the local government must withdraw a proposed ordinance within 30 days or repeal an adopted ordinance within 60 days.

The bill does not, however, apply to ordinances relating to three fields or areas: comprehensive planning and growth management; the Florida Building Code; and the Florida Fire Code. Each of those statutory areas authorize local ordinances to pass local legislation under certain circumstances. The bill otherwise applies to express preemption challenges initiated on or after July 1, 2019.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 25-14; House 77-31