

PREEMPTION / HOME RULE

SB 714: This bill by Pinellas Senator DiCeglie is virtually identical to one which was filed but did not make it through the adoption process in the last legislative session. As relates to municipalities, the bill amends Florida Statutes § 509.032(7) (preempting local prohibition of vacation rentals and prohibiting local regulation as to the frequency or duration of vacation renting) by:

- Allowing vacation rental ordinances in place prior to June 1, 2011 to be amended, but only if the amendments are less restrictive than the prior ordinance
- "Allows" local governments to create a vacation rental registration program and impose a fine if a rental owner fails to register.
- Limiting registration renewal to no shorter than annually and limiting registration fee to \$50.
- Allow local governments to require vacation rental owners to designate a responsible party capable of responding to complaints (see also SB 92/HB 105 which allows this too, but does not contain all of the other provisions of SB 714)
- Allowing local governments to require payment of all recorded code fines as a condition of registration
- Mandating local governments approve registration applications within 15 days
- Limiting a local government's ability to deny registration only to instances where the owner fails to register or violates an ordinance "that does not apply solely to vacation rentals"
- Preempting local ordinances from regulating vacation rental advertising platforms in any way, as that would now be preempted to the state.

While the bill purports to give local governments authority they did not already have, since the current preemption statute only prohibits the total ban of vacation rentals, and regulations on frequency and duration of renting, cities and counties already have the home rule authority to adopt registration programs and other vacation rental regulations which do not regulate frequency or duration. See, *Management Properties, LLC v. Town of Redington Shores*, 29 Fla. L. Weekly Supp. 793b (6th Judicial Circuit, January 28th 2022), *aff'd.*, 352 So.3d 909 (Fla. 2d DCA 2022) (judgment on the pleadings for the Town was proper as to the vacation rental operator's claim that the Town's vacation rental code, including a registration and certificate of use program, was preempted by the statute).

The actual effect of this bill would be to remove home rule authority already possessed (and in many cases in Florida already exercised) by local governments. Many local governments have, for instance, already adopted registration programs, fees and fines higher than are set out in the bill, and require hosting platforms to produce certain reports or other similar actions. Were this bill to pass, attorneys for vacation rental owners would argue that since the legislature called out things local governments could do, by implication anything else is preempted. Thus, the current "frequency and duration" limited preemption would effectively become an almost total preemption since all local governments could do would be to require registration (which presumably is mostly useful to ensure taxes are being paid).

SB 170: This is a lengthy bill which is thought to be a priority of the Senate President. The bill creates a substantial change in the manner local governments adopt ordinances, and exposes local governments to suit and attorney fees related to challenges to ordinances. Currently, ordinances have a presumption of validity and, with some exceptions, challenges to ordinances are subject to the "rational basis test", which is deferential to the policy judgments of elected local officials and which is not difficult to establish in litigation challenging ordinances. And, at least for challenges brought in state court, attorney fees are not usually available.

Unfortunately, this bill departs from that philosophy in numerous respects. First, the bill provides that if a plaintiff challenges an ordinance "on the grounds that the ordinance is arbitrary or unreasonable, or is prohibited by law other than via express preemption, the court may assess and award reasonable attorney fees and costs and damages to the complainant if successful."

The bill requires a municipality to prepare a business impact estimate before adopting an ordinance and specifies the minimum content that must be included in the statement. The bill exempts various ordinances from this requirement. The business impact estimate must be posted on the municipality's website no later than the date of publication of notice of the proposed ordinance. Second, the bill requires a municipality to suspend enforcement of an ordinance that is the subject of a civil action challenging the ordinance's validity on the grounds that it is arbitrary or unreasonable or expressly preempted by state law. This requirement applies only if: the action was filed within 90 days of the ordinance's effective date; suspension of the ordinance was requested in the complaint; and the municipality was served with a copy of the complaint. If the municipality prevails in the civil action, the municipality may enforce the ordinance unless the plaintiff appeals the decision and obtains a stay of enforcement from the court. Third, the bill authorizes the award of attorney fees, costs and damages to a prevailing plaintiff in a civil action commenced after October 1, 2023, in which an ordinance is alleged to be arbitrary or unreasonable. Attorney fees, costs and damages are capped at \$50,000. The bill authorizes a court to impose sanctions upon a party for filing a paper, pleading or motion for an improper purpose (such as to harass or delay). The bill requires courts to prioritize and expedite the disposition of cases in which enforcement of an ordinance is suspended.

The bill has already passed one committee and is now in its final stop in the Senate Rules committee. That is an indicator that it is on a fast track for adoption. There is currently no House companion bill but that could change once Senate and House leadership begin negotiating on competing priorities closer to session end.

***PLANNING NOTE:** Since some version of this legislation is likely to pass, our office recommends that the Code of Ordinances be thoroughly reviewed and ordinance updating be accomplished before the October 1st 2023 effective date in the bill.

HB 317/SB 388: As relates to municipalities, these companion bills would preempt the regulation of sales or resale of tickets to the state.

BUILDING CODES/CONSTRUCTION

HB 89: This bill would prohibit a local government from making substantive changes to building plans after a permit has been issued. If substantive changes are made after a permit is issued, the local government must identify the specific plan features that do not comply with the Florida Fire Prevention Code or Life Safety or local amendments, identify the specific code chapters and sections upon which the finding is based and provide this information to the permitholder. A local fire inspector who fails to comply is subject to disciplinary action.

HB 327/SB 408: These companion bills define a fire sprinkler system project as an alteration of a total of 20 or fewer fire sprinklers or the installation or replacement of an equivalent fire sprinkler system component in an existing building. A local government may require a contractor as a condition of obtaining a permit for a fire sprinkler system project, but may not require a contractor

to submit plans or specifications as a condition of obtaining the permit. All documents for a fire sprinkler system project must be available to the inspector at each inspection.

ECONOMIC DEVELOPMENT

HB 413: This bill prohibits agency agreements from requiring local governments within a rural area of opportunity to expend funds in order to be reimbursed. Agency funding may be advanced to cities and counties based on an analysis of estimated costs, pay service providers or vendors directly or undertake other options to meet the requirements of the agreement.

EMERGENCY MANAGEMENT

N/A

ENVIRONMENT

HB 77/SB 186: These companion bills provide that beginning July 2023, the ground vibration limit for construction materials mining activities within one mile of residentially zoned areas may not exceed .15 inches per second. The bills authorize the Chief Financial Officer to direct the State Fire Marshal to modify the standards for the use of explosives in connection with construction materials mining activities within one mile of residentially zoned areas.

HB 111: This bill revises current law provisions that require certain public-financed projects and infrastructure undergo a Sea Level Impact Projection Study prior to construction. The bill expands the types of projects and infrastructure subject to the requirement by including "potentially at-risk" projects within an area that is "at-risk due to sea-level rise." The bill defines "at-risk due to sea-level rise" and "potentially at-risk structure or infrastructure." The bill also adds a requirement that a public-financed constructor provide a list of flood mitigation strategies evaluated as part of the design of the potentially at-risk structure or infrastructure and identify the flood mitigation strategies that have been implemented or are being considered as part of the structure or infrastructure design.

ETHICS & ELECTIONS

HB 405: This bill's aim is to convert local elections from nonpartisan to partisan. It proposes an amendment to the Florida Constitution that would prohibit nonpartisan municipal elections. The proposal also provides that only qualified electors in a municipal election with the same party affiliation as a candidate for office may vote in the primary election for such office (even if a candidate has no opponent with a different party affiliation). The same prohibitions and limitations are imposed on all other state, county and local primary elections, including school boards. In addition, the proposal specifies that a candidate for office may not be prohibited from disclosing his or her party affiliation to the electors and may not be prohibited from campaigning or qualifying for office based on party affiliation.

HB 199, HB 241: These are both House bills on the same topic but with some differentiation. Both bills would remove a current law exemption in the Code of Ethics for Public Officers and Employees for officers of certain special taxing districts created by general or special law relating to conflicting employment and contractual relationships. The effect of the revision would make

such officers subject to the prohibition against holding conflicting employment or contractual relationships. In addition, HB 241 would require ethics training for elected local officers of independent special districts.

HB 37: This bill requires all municipal mayors, city commissioners, elected members of a municipal governing body, and all municipal and county managers to file an annual Full Disclosure of Financial Interests (Form 6) with the Florida Commission on Ethics. These individuals are currently required to file only a Limited Disclosure of Financial Interests (Form 1).

FINANCE & TAXATION

SB 698/HB 731: These companion bills require counties to place tax-renewal referendums on the General Election ballot that precedes the tax's expiration date. The stated policy aim of the bills is to prohibit counties from using an off-cycle election where turnout may not be as significant as a means of gaining passage of renewals of tourist taxes, local discretionary sales tax or special taxing districts. While not directly aimed at municipalities, obviously to the extent municipalities receive proceeds from renewed local option taxes, there could be a derivative fiscal impact.

SJR 126/HJR 159: These Joint Resolutions propose an amendment to the Florida Constitution to increase the just value of a home that may be eligible to receive an additional homestead exemption for homes owned by seniors 65 years or older from \$250,000 to \$300,000. Under current law, a county or city may authorize an additional homestead exemption for seniors over the age of 65 if the value of the home is \$250,000 or less, has been a permanent residence for at least 25 years, and certain income limitations are met. The legislation would increase the just value limit of real estate eligible for the homestead tax exemption from \$250,000 to \$300,000.

SB 124/HB 161: These companion "implementing" bills relate to SJR 126 and HJR 159 reviewed above, and would increase the just value limit of real estate eligible for the homestead tax exemption that may be adopted by counties or municipalities for certain persons age 65 and older if SJR 126, HJR 159 or a similar constitutional amendment is approved by the voters at the next general election.

SJR 122/HJR 469: These Joint Resolutions would reduce the limitation on annual increases of homestead property tax assessments from 3% to 2%. In 1994, the State of Florida established a 3% Save Our Homes (SOH) Cap assessment limit on all residential properties that receive a homestead exemption. The 3% SOH Cap limits any increase to the assessed value of a homestead exempt property for tax purposes to a maximum of 3% each year. SB 120 would reduce the assessment limit to a maximum of 2% each year. SJR 122 and HJR 469 are constitutional amendments and would require the approval of the Florida Legislature and the voters of Florida.

SB 120/HB 471: These companion "implementing" bills relate to SJR 122/HJR 469 reviewed above. They would reduce the limitation on annual increases of homestead property tax assessments from 3% to 2% if SJR 122 or a similar constitutional amendment is approved by the voters at the next general election.

HB 127: This bill expands the current ad valorem tax exemption for not-for-profit homes for the aged to also allow a home for the aged owned by a separate entity that is owned by a not-for-profit corporation to also receive the exemption.

SB 288/HB 499: These companion bills create the Main Street Historic Tourism and Revitalization Act, which provides a tax credit against corporate income taxes and insurance premium taxes for qualified expenses incurred in the rehabilitation of a certified historic structure. The tax credit may not exceed 20% of qualified expenses incurred in the rehabilitation of a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit or 30% of the total qualified expenses incurred in the rehabilitation of a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit that is located within a local program area of an Accredited Main Street Program.

HB 101/SB 184: These companion bills expand the current homestead exemption for the surviving spouse of a first responder who dies in the line of duty to include first responders who die in the line of duty while employed by the United States Government.

SB 474: This bill revises the timeframe under which certain appeals of value adjustment board decisions must be filed by a property appraiser under certain circumstances. It specifies when erroneous assessment of homestead property must be corrected as in the year the error is discovered and removes duplicative language from the sections pertaining to correcting the error when present in subsequent years. The bill authorizes a taxpayer to appeal the amount of a homestead assessment limitation difference with the value adjustment board. It also includes adding appeals for which a value adjustment board must meet to hear taxpayer claims for adjustments.

HB 229/SB 220: These companion bills authorize local governments to adopt ordinances to grant partial ad valorem tax exemptions to property owners whose properties are used to provide affordable housing.

HOUSING

SB 102: This bill is a comprehensive housing bill that sunsets after 10 years. Of interest to municipalities:

Funding and Tax Credits

The bill proposes over \$700 million for affordable housing programs including \$252 million for SHIP, \$259 million for SAIL and \$100 million dollars for the Florida Hometown Hero Housing Program.

The bill creates a new Live Local Corporate Tax Donation program for taxpayers to donate funds directly to the Florida Housing Finance Corporation (FHFC) for the SAIL program in return for tax credits against corporate and insurance liability tax.

Affordable housing tax exemptions

The bill authorizes municipalities to provide property tax incentives for developments that serve households at 50% AMI or below.

Zoning and Land Use

The bill preempts municipalities' regulation on zoning, density and height for certain multi-family affordable housing developments in commercial areas as well as prohibits any local government from enacting rent control.

The bill also requires municipalities to post an inventory of lands appropriate for affordable housing on its website.

IMMIGRATION

N/A

LAND USE & COMPREHENSIVE PLANNING

HB 41: This bill would prohibit an initiative or referendum process for any amendment to local land development regulations. Under current law, the initiative or referendum process is prohibited for any development order and, under certain circumstances, local comprehensive plan or map amendments. The bill would now also prohibit the use of initiatives or referendums for any amendment to land development regulations. The bill is drafted to be remedial in nature and would render null and void any referenda or initiative actions pertaining to land development regulations commenced after June 11, 2011. Some municipal charters contain provisions requiring referenda regarding zoning changes, and some votes have occurred between June of 2011 and 2023. If adopted as written, this bill could throw into question referendum votes which occurred during this period.

HB 439: This bill revises and amends a variety of elements impacting local government comprehensive planning as well as methodologies in data usage and planning period timeframes. The bill specifies that local governments must comply with Special Magistrate decisions where land use decisions were challenged by petitioners who were previously denied. Several key terms are redefined, such as density, intensity, urban service area and urban sprawl. It includes a mandate to use the state Office of Economics and Demographic Research as the sole source of data for comprehensive planning. Removes the consideration of Levels of Service as a basis for denying a petition. Planned Unit Developments are removed from this section of Florida Statutes. The bill also prohibits the formation of new Design Review Boards unless established before January 1, 2020. The bill has a retroactive application to January 1, 2022.

HB 359: Local Comprehensive Plans allows prevailing parties to recover attorney fees in challenges to comprehensive plans and plan amendments. Many citizen and public interest groups are concerned that this change in law would effectively eliminate planning challenges by citizens and public interest groups because, if they lose, they could be required to pay enormous challenge-related legal costs incurred by well-funded developers and local governments.

HB 235/SB 350: These companion bills provide clarity to local government adoption of a mobility plan and a mobility fee system. A mobility plan identifies various multimodal projects necessary to permit redevelopment, infill projects, and development. A mobility fee is a one-time fee paid by a developer to a local government to cover the costs of the improvements necessary to fully mitigate the development's impact on the transportation system. The bill would prohibit a

transportation impact fee or fee that is not a mobility-based fee from being imposed within the area that is within a mobility plan. The bills would require mobility fees to be updated every five years once adopted or updated. The bills outline the comprehensive requirements a local government must follow in implementing the mobility plan and mobility fee system. In addition, the bills make a revision to the impact fee statute that was substantially amended during the 2021 Legislative Session. Current law now limits the amount impact fees can be increased by, and it requires a phase-in period depending on the amount an impact fee is increased by. However, current law also provides an exception to the impact fee increase process by allowing for increases to be greater than the requirements if the governmental entity establishes the need for the increased fee pursuant to the rational nexus test, uses a study (completed within the 12 months preceding the increase) showing that extraordinary circumstances require the additional increase, holds at least two publicly noticed workshops, and adopts the increase by a 2/3 vote. The bills will eliminate this exception to impact fee increases. Therefore, all impact fee increases will have to comply with the increase limits and phase-in requirements provided for in the current law, with no exception.

HB 349: This bill promotes the development of a network of vertiports that will provide residents in Florida with equitable access to advanced air mobility operations for passenger and cargo services. For vertiports to operate in the state, the owner must comply with the Federal Aviation Administration's regulations and guidance relating to vertiport design and performance standards as well as submit a layout plan to the administrator of the Federal Aviation Administration. The bill specifies that a local government may not exercise its zoning and land use authority to give an exclusive right to one or more vertiport owners or operators.

PARKS & RECREATION

N/A

PERSONNEL

HB 563: This bill would prohibit the use of TikTok, or other applications developed or provided by ByteDance Limited, on a government-issued device.

HB 169/SB 314: These companion bills require employers of first responders to pay for up to 12 hours of licensed counseling following a work-related traumatic event. This benefit would be in addition to any potential workers' compensation claim or counseling services covered by health insurance. Covered first responders include firefighters, paramedics, emergency medical technicians and law enforcement officers, including those working on a volunteer basis. The bills also hold the employing agency responsible for paying for up to an additional 24 hours of treatment if a mental health specialist finds that the first responder requires more hours of counseling.

HB 107: This bill would create the summer youth learning program within the Department of Economic Opportunity. This program would match students from low-moderate income families who have outstanding academic records or trade skills with appropriate summer employment opportunities with state agencies, school districts, local governments and participating private businesses in order to prepare such students to enter the workforce as adults. Participation in the program would be optional for local governments and funded by the Department of Economic Opportunity.

HB 337/SB 352: These companion bills provide that 911 public safety telecommunicators and crime scene investigators are eligible for workers' compensation benefits for post-traumatic stress disorder, which is currently provided to first responders. The bills specify that the time for notice of an injury or death in a compensable post-traumatic stress disorder claim must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

HB 181: This bill specifies the minimum factor used to calculate the cost-of-living adjustment for certain retirees and beneficiaries of the Florida Retirement System.

HB 95: This bill amends the "law enforcement officer bill of rights" to prohibit a law enforcement officer or correctional officer from being discharged, suspended, demoted or otherwise disciplined solely as a result of that officer being included on the Brady Giglio list. The Brady Giglio list is a database that contains information about police misconduct, public complaints, use-of-force reports, etc.

HB 23/SB 162: These companion bills state that water and wastewater facility operators are essential first responders. The bills require the Department of Environmental Protection to issue a license by reciprocity to any applicant who: (1) is a water treatment plant operator, water distribution system operator or domestic wastewater treatment plant operator and who holds an active and valid license from another state, the federal government or tribal government, for which the licensure requirements are comparable to or exceed Florida's licensure requirements; (2) has passed a licensure examination comparable to the Department's licensure examination, subject to approval of the Department; (3) is not the subject of a disciplinary or enforcement action outside of Florida at the time of application; (4) submits a completed application for reciprocal licensure; and (5) remits the application fee. The bills further direct the Department to issue a license by reciprocity to any applicant who: (1) has performed comparable duties while serving in the U.S. armed forces, for which the requirements for performing the duties are comparable to or exceed the Department's licensure requirements; (2) has passed a skills assessment or competency examination comparable to the Department's licensure exam, subject to approval by the Department; (3) is not the subject of any disciplinary or enforcement action at the time of application; (4) submits a completed application to the Department; and (5) remits the application fee. Lastly, the bills authorize the Department, during a declared state of emergency, to issue a temporary operator license by reciprocity under specified conditions and to waive the application fee for such temporary operator license.

PUBLIC PROCUREMENT

SB 284: This bill revises the vehicle procurement requirements for the state purchasing plan. Specifically, the bills require vehicles of a given use class to be selected for procurement based on the lowest lifetime ownership costs rather than the greatest fuel efficiency. Before July 1, 2024, the Department of Management Services (DMS) shall make recommendations regarding the procurement of electric vehicles and best practices for integrating such vehicles into existing fleets. The bill directs DMS to rank vehicles based on the lowest cost of ownership over five years. Any vehicle purchased under the state's purchasing plan must be ranked in the top five of the Department's rankings. Law enforcement vehicles are exempt from this requirement.

PUBLIC RECORDS & PUBLIC MEETINGS

HB 397: This bill would allow local governments to meet in private with legal counsel, during the 90-day notice period, to discuss claims concerning the Bert Harris Act and private property rights. Transcripts of these private meetings will be made a part of the public record upon settlement of a claim or when the statute of limitation has expired if there is no litigation or settlement.

SB 216/HB 525: These companion bills create a public records exemption for the personal identifying and location information of current and former county and city attorneys and assistant/deputy county and city attorneys, as well as information regarding the spouses and children of those attorneys.

PUBLIC SAFETY

HB 364/HB 535: These companion bills allow a law enforcement agency to grant administrative leave, up to eight hours, to a law enforcement officer in order to attend a funeral of an officer killed in the line of duty. The bills specify that expenses incurred with bereavement travel are to be reimbursed by the agency. The bills also increase the amount to be paid toward funeral and burial expenses of an officer from \$1,000 to \$10,000.

HB 341: This bill revises the time period that a 911 public safety telecommunicator certificate may remain inactive or be reactivated from 180 days to 6 years.

HB 215/HB 456: These companion bills prohibit the possession or use of a firearm in "sensitive locations." The bills define a sensitive location as numerous public facilities including but not limited to buildings or facilities owned, leased or operated by government entities, including public transportation.

TRANSPORTATION

N/A

UTILITIES

HB 361: This bill requires a municipality that operates a water or sewer utility providing services to customers in another recipient municipality using a facility or plant located in the recipient municipality to charge customers in the recipient municipality the same rates, fees, and charges it imposes on customers within its own municipal boundaries.

OTHER

HB 401: This bill (which is similar to a bill filed last year) removes the statutory limits on liability for tort claims against the state and its agencies and subdivisions (which include cities). The current statutory limits for claims are \$200,000 per person and \$300,000 per incident. The bill eliminates these statutory limits subjecting government entities to unlimited liability arising from potential claims.

SB 696/HB 729: these companion bills address employment contracts for local agency CEOs and attorneys. As relates to municipalities, the bills provide that the employment contract of the chief

executive officer or municipal attorney of a municipality shall not be renewed, extended, or renegotiated within 12 months before an August primary election for the municipal mayor or for members of the governing body of the municipality.

The stated policy goal is to avoid having outgoing members of a governing body give a long-term employment contract to a top official, only to have a different newly-elected majority of a governing body vote to terminate the contract, thus costing the taxpayers the contract payout.

SB 92/HB 105: These companion bills codify the ability of local governments to require vacation rental owners or operators to designate and maintain at all times the name and contact information of a responsible party who is able to respond to complaints and other immediate problems related to the property. As noted earlier, this “grant of authority” is not necessary since local governments already have this police power authority.