The background of the entire page features a close-up, low-angle shot of an American flag on the left, with its stars and stripes clearly visible. On the right, the golden-brown steel framework of a building under construction is visible against a bright, slightly hazy sky. The flag and building are partially obscured by a dark blue, angular graphic element that serves as a backdrop for the main title.

FHBA

IMPROVING FLORIDA'S

BUILDING INDUSTRY

2021 **ADVOCACY BRIEFING**



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FHBA PRESIDENT



Scott McCracken
President

Following one of the most unusual lawmaking processes in the Legislature's 176-year history, the 2021 Florida legislative session came to a close on April 30, 2021.

From Zoom meetings with legislators to live-feed Senate committee hearings at the Donald L. Tucker Civic Center, there was no such thing as a "normal day" during the 60-day session or its five preceding committee weeks. Although the FHBA lobbying team was without access to a lobby or the 4th floor rotunda, that did not hinder FHBA's impact on key construction issues.

Homebuilding advocates and housing champions are found during election time. There are no secrets in this process. In order to improve the building climate across the state, and support an economic environment that addresses anti-growth regulations head on, we must continue to elect pro-construction and pro-business candidates across the state. The FHBPAC continues to fulfill this mission with ever-increasing donations and support – and key Senate and House leadership are taking notice. Thank you to all the contributors, supporters and 1000 Club members for continuing to advance our mission of creating an environment in which the construction industry can prosper. Advocacy is the cornerstone of our work to improve Florida's building industry.

This summary highlights successes not only as it pertains to FHBA's top five priority pieces of legislation, but work done on a gamut of issues pertinent to our business.

Enjoy the read.

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fhba
FLORIDA HOME
BUILDERS ASSOCIATION

For more information about these issues and others, please contact us.



2021 SESSION IN REVIEW

During the 2021 Legislative Session, 3,140 bills were filed and just 275 were sent to the Governor DeSantis' desk. That equates to less than nine% of bills filed receiving final passage from both the House and the Senate. Despite this low passage rate, the Florida Home Builders Association (FHBA) had a tremendously successful session effectively advocating for our industry.

As you review the information below, please keep in mind that every bill the Legislature passed must still be approved by Governor DeSantis prior to becoming law. FHBA will continue to work with the Governor's Office in order to ensure they understand the importance and impact of our legislative priorities.

Impact Fees

HB 337 by Representative Nick DiCeglie (R-Indian Rocks Beach)

SB 750 by Senator Joe Gruters (R-Sarasota)

Final Vote: Florida House: 94 Yeas, 23 Nays; Florida Senate: 28 Yeas, 12 Nays

2020 was a reckoning for builders and home buyers across the state, with many local governments looking to the homebuilding industry as the "golden goose" for new or increased lines of revenue. Impact fee increases ranged from 300% in small towns such as Punta Gorda to 100% in large counties such as Hillsborough. For many, the increases were only the root of the issue. Many of these large increases were fully implemented in a matter of months.

HB 337 capped off the legislative process with a bi-partisan vote in the Florida Senate and House of Representatives. The bill sets forth critical provisions that will tackle rising impact fees on new construction by:

- **Increasing market predictability through a responsible phase-in provision.** The bill ensures impact fee increases are incrementally phased-in at no more than 12.5% annually and no more than 50% over a four-year period. This addressed counties such as Hillsborough and Orange, which in the height of an affordable housing crisis, increased impact fees by 80% and 160% in a matter of months.

- o In order to address *extraordinary circumstances* and prevent the possibility of future moratoriums, a "relief valve" was created for local governments to exceed the phase-in limitations while clearly defining legislative intent and ensuring the exception does not become the rule. To exceed the phase-in limitation of 12.5% annually, a local government would need to fulfill all the requirements of current law and provide:

1. A demonstrated-need study, completed within a year, that specifically justifies any increase greater than 12.5% annually; and specifically states the extraordinary circumstances necessitating the need to exceed the phase-in provisions;

2. The local government jurisdiction has held no less than two publicly-noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations;

3. Finally, once the extraordinary circumstances checklist is complete, the governing board must approve the need to exceed the phase-in by two-thirds vote.

o Retroactivity of the phase-in provision to January 1, 2021 was established to address counties, such as Orange, that increased their transportation impact fees by 160% in the middle of the Legislative Session in order to beat the responsible phase-in provisions of HB 337.

- **Defines infrastructure.** HB 337 will ensure impact fees are calculated and expended on true capital infrastructure projects. The law limits the number and types of public facilities that impact fees may be implemented for. That is eliminating “General Government Buildings”, “Jails”, and “Libraries” from the list of public facilities for which impact fees may be collected, as well as ensuring impact fees are not used to pay for fixtures, furniture, or equipment. This definition will help eliminate frivolous studies by ensuring “impact fee consultants” cannot throw every expense conceivable into the pot when calculating future fee increases.

- Clarifies that all impact fee credit holders can redeem credits
- Requires local government attestation that impact fees were collected and expended in compliance with the statutes



Orlando Sentinel – “Dane Bennett, speaking for the Florida Home Builders Association, defended the proposed legislation in remarks to the subcommittee. He said government consultants who conduct impact-fee studies “often are hired on their ability to show the need for the largest increase.” Bennett said impact-fees are then passed directly onto the home buyer in the price of a new house. “They make new homes less affordable.”



Florida Building Codes

HB 401 by Representative Elizabeth Fetterhoff (R- Deland)

SB 1146 by Senator Jason Brodeur (R- Lake Mary)

Final Vote: Florida House 102 Yeas, 12 Nays; Florida Senate: 38 Yeas, 1 Nay

HB 401 began the legislative process with three simple provisions that (1) sought to prohibit building departments from requiring signed contracts with building permit applications, (2) discourage local governments from bypassing the Florida Building Commission's local technical amendment process, and (3) allow the Commission to correct errors to the code by simplifying the procedures and not opening the process up to special interests. However, by Sine Die, HB 401 had nearly doubled in provisions.

The bill now:

- Prohibits local governments from using preliminary maps issued by the Federal Emergency Management Agency (FEMA) for the purposes of imposing land use changes or permits.
- Includes SB 284's "Building Design" legislation which includes local preemption on aesthetic controls.

- o Provides that land development regulations relating to building design elements may not be applied to single-family or two-family dwellings, but provides carve-outs for dwellings listed in: Community Redevelopment Areas, National Register of Historic Places, Master Planned Communities, and under Architectural Review Boards.

The bill retains the following provisions:

- Discourages local governments from bypassing the local technical amendment process.
 - o Local governments can amend the statewide Florida Building Code by filing local amendments to the technical provisions of the Code that have local or regional impact. Current law states that all local technical amendments to the Florida Building Code must be submitted to the Florida Building Commission and show a specific need.
 - o However, local governments are circumventing the technical amendment process (and therefore not showing a specific need) by including building code provisions in their zoning and development codes, such as electrical outlet requirements, mandating "electric vehicle ready" charging in new garages, solar requirements, etc. HB 401 ensures that any regulation, law, ordinance, policy, amendment, or land use provision that an affected person believes is a technical amendment to the Florida Building Code, may file a petition to the Florida Building Commission for a non-binding advisory opinion stating whether the commission interprets the provision as a technical amendment to the Florida Building Code.

- HB 401 grants the Florida Building Commission the authority to issue errata to the code and correct errors that make the code non-compliant with adopted reference standards, e.g., minimum design loads under the American Society of Civil Engineers (ASCE) 7, without reopening the entire code to product manufacturers, special interest, etc.
- Prohibits jurisdictions from requiring building contracts with permit applications.
 - o Contracts between builders and owners are completed with proprietary information and local governments are subject to the Sunshine Law. Prohibiting signed contracts with building permit applications will prevent building departments from posting proprietary information.

CONSTRUCTION PERMITS

HB 1059 by Representative William Robinson (R- Bradenton)

SB 1788 by Senator Jim Boyd (R- Bradenton)

Final Vote: Florida House 113 Yeas, 0 Nays; Florida Senate: 38 Yeas, 0 Nays

HB 1059 passed the Florida House of Representatives and the Florida Senate unanimously. Effective October 1, 2021, the legislation requires each local enforcement authority to:

- Post each building permit application, require attachments such as drawings and plans on their websites;
- Allow applicants to submit completed building permit applications electronically, including any required payments and attachments;
- Provide the status of every received building permit application on their website; and
- Post their procedures for reviewing, processing, and approving building permit applications on their websites.

Further, the legislation applies penalties on local enforcement authorities who fail to meet statutory deadlines, such as 10 percent permit fee reductions if a jurisdiction fails to issue a building permit within 30 business days (and 10 percent reductions every business day thereafter). Lastly, the legislation provides an applicant with 10 days to correct an unsuccessful application.

PREEMPTION OVER RESTRICTION OF UTILITY SERVICES

HB 919 by Representative Josie Tomkow (R- Polk City)

SB 1128 by Senator Travis Hutson (R-Palm Coast)

Final Vote: Florida House 81 Yeas, 34 Nays; Florida Senate: 27 Yeas, 13 Nays

HB 919 addresses local governments such as the City of Tampa, which proposed a resolution banning natural gas hookups to new and existing homes. HB 919 will prohibit local governments from enacting rules that would restrict or otherwise prohibit the types of fuel sources of energy which may be used to serve customers, such as: Investor-owned electric utilities; Municipal

electric utilities; Rural electric cooperatives; Entities formed by interlocal agreement to generate, sell, and transmit electrical energy; Investor-owned gas utilities; Gas districts; Municipal natural gas utilities; Natural gas transmission companies; and Certain propane dealers, dispensers, and gas cylinder exchange operators.



CIVIL LIABILITY PROTECTIONS FOR DAMAGES RELATING TO COVID-19

HB 7 by Representative Lawrence McClure (R- Dover)

SB 72 by Senator Jeff Brandes (R- St. Petersburg)

Final Vote: Florida House 83 Yeas, 31 Nays; Florida Senate: 24 Yeas, 15 Nays

One of the Governor's top priorities, SB 72, was passed by the legislature and subsequently signed into law by Governor Ron DeSantis March 29, 2021. The new law is intended to protect Florida businesses from frivolous COVID-19 lawsuits. It deters unfounded grievances against individuals and businesses who made good faith efforts to substantially comply with health standards while allowing credible lawsuits, based on gross negligence, to proceed.

For claims against a person, the bill establishes requirements that a plaintiff must complete before the case can proceed. A court must determine:

- The complaint was pled with particularity.
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believes that the defendant caused the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action.
- The defendant made a good faith effort to substantially comply with health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability.
- If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by clear and convincing evidence.

BUILDING INSPECTIONS

HB 667 by Representative Jim Mooney (R- Islamorada)

SB 1382 by Senator Keith Perry (R- Gainesville)

Final Vote: Florida House 118 Yeas, 0 Nays; Florida Senate: 39 Yeas, 0 Nays

HB 667 requires local enforcement agencies to allow requests for inspections to be submitted electronically.

Further, the bill requires a local enforcement authority to refund 10 percent of the permit and inspection fees if:

1. The inspector or building official determines the work, which requires the permit, fails an inspection; and
2. The inspector or building official fails to provide a reason that is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 5 business days.

The bill clarifies that any government entity with authority to enforce the Building Code may perform virtual inspections at the discretion of the government entity, excluding structural inspections on threshold buildings.

- Virtual inspections are defined as an inspection that uses visual or electronic aids to allow a building official or inspector to perform an inspection without having to be physically present at the job site during the inspection.

SADOWSKI HOUSING TRUST FUNDS

HB 5401 by Representative Josie Tomkow (R- Polk City)

SB 2512 by Senate Appropriations Committee

Final Vote: Florida House 78 Yeas, 38 Nays; Florida Senate: 25 Yeas, 14 Nays

SB 2512 initially called for 24.17% of documentary stamps collected for housing trust funds to be equally divided into three separate, statutorily defined, recurring pots of 6.84519% for the newly created Resilient Florida Trust Fund; 6.84519% for the Water Sustainability and Accountability Trust Fund; and 6.84519% for the State Housing Trust Fund and Local Government Housing Trust Fund.

However, following input from affordable housing advocates and the Governor, the Senate adopted an amendment that shifted the percent of documentary stamps for affordable housing from 6.84519% to 9.70254%. This shifted this year's available funds for housing (based on the current revenue estimate) from \$141.1 million to \$209.4 million. Considering the Governor's veto in 2020, and CAREs Act replacements, 2021 will be the largest appropriation of affordable housing dollars since 2008.

Additionally, the legislation will place the percentages in statute and move Sadowski's appropriations from a non-recurring status to recurring with no opportunities for sweeping during future appropriations negotiations.

PREEMPTION OF LOCAL OCCUPATIONAL LICENSING

HB 735 by Representative Joe Harding (R- Williston)

SB 268 by Senator Keith Perry (R- Gainesville)

Final Vote: Florida House 82 Yeas, 32 Nays; Florida Senate: 22 Yeas, 18 Nays

SB 268 expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. The legislation specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board (CILB).



The bill prevents local governments from requiring a local license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

This bill also authorizes local governments to issue journeyman licenses in the plumbing, pipe fitting, mechanical, and HVAC trades, as well as the electrical and alarm system trades (which is current practice by local governments). We are told by staff that there is nothing in this legislation that would otherwise allow an unlicensed individual to perform any duty that requires a state license.

DEPARTMENT OF FINANCIAL SERVICES (FIRE PREVENTION AND CONTROL)

Despite roadblocks for HB 415 / SB 360 entitled “Fire Prevention and Control,” the Department of Financial Services’ “department bill,” HB 1209 by Representative Fetterhoff passed the Florida Legislature and includes a provision of both HB 415 and SB 360.

HB 1209:

- Kicks the can down the road for existing high-rise buildings to comply with minimum radio strength and two-way radio system enhancement communications as required by the Florida Fire Prevention Code (FFPC) from January 1, 2022 to January 1, 2025.
- However, by January 1, 2024 an existing building that is not in compliance must apply for an appropriate permit with the local government agency having jurisdiction and demonstrate that the building will become compliant no later than January 1, 2025.

PROPERTY INSURANCE

SB 76 by Senator Boyd gave the Governmental Affairs Committee some concern in the early days of Session, mostly centered on a provision regarding actual cash value (ACV) replacement schedules for roofs. Like construction defects, the insurance industry is looking to take on frivolous lawsuits, but only this time, related to fraudulent roof damage claims.

Alarming, the initial ACV provision allowed an insurer to offer homeowner’s insurance policies that adjust claims on roofs 10-years old or older based on a roof covering reimbursement schedule without also having to offer a policy that provides replacement cost adjustment for the roof. By Day 60 and coincidentally, the passage of the bill, the ACV provision was successfully removed from the legislation.

Much of the final legislation is centered on lawsuits involving property insurance policies, consolidation of legal actions, and alternative dispute resolutions. However, fragments of the legislation include solicitation provisions that prohibit licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. It does not prohibit the contractor from recommending that the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance; an agreement worked out amongst the Chief Financial Officer and FHBA.

APPRENTICESHIP AND PREAPPRENTICESHIP PROGRAMS

HB 791 by Representative Joe Harding (R- Williston)

SB 366 by Senator Travis Hutson (R-Palm Coast)

Final Vote: Florida House 116 Yeas, 0 Nays; Florida Senate: 39 Yeas, 0 Nays

SB 366 successfully passed the legislature and provides that the Department of Education (DOE) reimburse employers, including school districts and state colleges, for the proportionate cost of workers' compensation insurance premiums for students in work-based learning opportunities.

The legislature appropriated \$2 million to the DOE for reimbursement of workers' compensation insurance premiums.

CONSTRUCTION DEFECTS

HB 21 by Representative Alex Andrade (R- Pensacola)

SB 270 by Senator Keith Perry (R- Gainesville)

Since the law was established in 2003, opportunistic lawyers have exploited Chapter 558, the Construction Defects statute, by filing disingenuous and overly broad "558" claims. When contractors receive frivolous or broad 558 claims, they have no choice but to pass the claim on to every subcontractor who worked in the immediate area of the home.

Unfortunately, offers by home builders to repair the alleged defects are routinely rejected, as some attorneys look to profit from settlements rather than have the alleged defect repaired. This leaves subcontractors and contractors no choice but to turn 558 claims over to their insurance carriers, which only exacerbates general liability premiums for the entire industry.

HB 21 sought to:

- Define "material violation";
- Require claimants to exhaust warranty options before seeking recourse under Ch. 558;
- Require proof with specific detail surrounding the defect;
- Provide that the claimant must attest that they have personal knowledge of the alleged defect;
- Provide that the claimant does not have a cause of action for a construction defect if the contractor offers to fix the repairs at no cost to the claimant within 90 days (and the claimant is satisfied with the repairs);
- Ensure a notice to mortgage is provided for any 558 claim the resulted in monetary settlement, including whether the nature of the defect was repaired following...



- Ensure a notice to mortgage is provided for any 558 claim the resulted in monetary settlement, including whether the nature of the defect was repaired following the financial settlement; and finally,
- Changed the statute from an “opt-out” to an “opt-in” dispute resolution process.

Progress was made in both the House and Senate, as each bill made its way through committees for the first time in three years. The legislature is becoming more aware of the issue and momentum is certainly building. FHBA worked with Sachs Media in developing a campaign to increase awareness and understanding of the issue over the past month. Construction defects reform will continue to be a top priority for FHBA and the number one topic of conversation at all political events.

FLORIDA HOUSE

Committee Assignments for HB 21

1. Civil Justice & Property
Vote History: 10 Yeas, 8 Nays
2. Regulatory Reform
Vote History: 9 Yeas, 8 Nays
3. Judiciary
Not heard in committee.

FLORIDA SENATE

Committee Assignments for SB 270

1. Judiciary
Vote history: 9 Yeas, 1 Nays
2. Community Affairs
Not heard in committee.
3. Rules
Not heard in committee.

LEGISLATION PERTINENT TO THE VOLUME BUILDERS COUNCIL

SB 630 Community Associations by Senator Dennis Baxley

- Addresses the Centex case retroactively by ensuring developers are not required to fully fund HOA reserves once electing to setup a reserve fund. Eliminating the “all or nothing” result of the Centex ruling.

HB 421 Relief from Burdens on Real Property Rights by Rep. Jenna Persons-Mulicka and Rep. Kaylee Tuck

- Modifies the Bert Harris Act by including mineral estates, subsurface, and surface in the definition of real property. The bill also reduces the time frame under which a claimant must notify the government before filing an action; allows a court to determine damages (rather than a jury), extends the point from which a prevailing claimant can recover attorney fees and costs, and authorizes a property owner, under specified conditions, to notify the government that he or she deems a law or regulation’s impact on his or her real property is restrictive of allowable uses.

SB 912 Tolling and Extension of Permits During States of Emergency by Senator Ben Albritton

- Provides additional permits and authorizations that may be tolled and extended during a state of emergency, including: Consumptive use of water permits, development permits, and development agreements. The bill applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020.

HB 78 Public Records Redaction by Senator Will Robinson

- Corrects a glitch with a 2019 law relating to redaction of public records that made it virtually impossible to clear a title on property or file a proper notice of commencement or lien.


SB 622 Lien Law by Senator Keith Perry

- Although the bill included good provisions such as allowing remote online notarization and stop and start. Kari successfully negotiated for nearly three weeks on the very problematic lien waiver section. The language attempted to mandate the use of the statutory lien waiver forms and provided for direct contracts between the homeowner, contractor, subcontractor, and suppliers. Kari's negotiated amendment went on to eliminate the direct contract provisions and provided for a mandate of the use of the statutory lien waiver form unless the claimant had entered a contract that requires the claimant to furnish a waiver that is different from the statutory forms. When it was all said and done, the bill was postponed on the House floor, the bad provisions did not see the light of day, and the bill ultimately failed.

SB 100 Highway Projects by Senator Gayle Harrell

- Dismantles the Multi-use Corridors of Regional Economic Significance (M-CORES) program which was led last year by former Senate President Bill Galvano. The bill specifically repeals the M-CORES program and related provisions, while creating a program related to arterial highway projects.
- The Northern Turnpike extension from Sumter County to the Suncoast Parkway is still in the works. The repeal will focus on updating existing corridors such as prioritizing widening rural roads, improving traffic on U.S. 19, and extending the Turnpike at Wildwood.





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The FHBA works in partnership with 23 local and regional Builder/Industry associations to achieve legislative success.

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