

2022

FHBA LEGISLATIVE BRIEFING



FHBA Legislative Update—Week II

2022 Regular Legislative Session

Week II began with a dribble of bills making their way through the committee process. The Senate approved the redistricting maps for the Florida Senate (34-3 vote) and a map for the 28 Congressional seats (31-4 vote). A bill to allow businesses to sue local governments for business damages if local ordinances cause a loss of profits moved through its final Senate committee as did a measure that requires local governments to consider the fiscal impact of all ordinance and provides a mechanism for the courts to “stay” an ordinance that may have a detrimental effect on local businesses. Construction defects legislation, a top priority issue for FHBA, saw action in H. Civil Justice & Property Rights Subcommittee and a favorable school concurrency bill was approved unanimously in Local Administration & Veteran Affairs. **Your FHBA government affairs team is working hard to protect your industry. Additional bills of interest are outlined below and you may view the bills by clicking on the bill numbers.**

- **Private Provider Septic Tank Inspections--**[**HB 309**](#) by Rep. Fetterhoff and [**SB 856**](#) by Sen. Brodeur

This FHBA priority legislation authorizes the owner of a septic tank or the contractor upon the owner’s written authorization and contract to hire a private provider to inspect the septic tank. The bills provide qualifications the provider must hold to perform such inspections, prohibit DEP from charging any fees associated with a private provider inspection, and authorize DEP to audit the performance of such inspections. Notice must be given to DEP that the private inspection will be done and the owner is required to execute a form acknowledging that the owner must hold the department harmless from any claims arising from the use of the private provider inspection. HB 309 also prohibits a septic tank from being inspected by the person or company that installed the septic tank and an amendment will be offered to SB 856 to match. The bills authorize the department to audit “up to 25 percent of private providers each year.”

ACTION: No action this week. HB 309 passed H. Environment, Agriculture & Flooding by 14-1. SB 856 passed unanimously out of Environment & Natural Resources and Agriculture, Environment & General Government Subcommittee and is awaiting action in the Senate Appropriations Committee, final stop before the Senate floor.

➤ **Construction Defects—[HB 583](#) by Rep. Yarborough and [SB 736](#) by Sen. Hutson**

A top priority for FHBA, this legislation attempts to fix the “Notice & Right to Repair” law in Chapter 558, F.S., and reign in the fraudulent construction defect claims while still maintaining a remedy for homeowners with legitimate issues. SB 736 has passed two committees and key provisions of the Senate bill include reducing the Statute of Repose (SOR), mandating claimant to provide reason for rejecting offer of settlement or repair, and changing the “clock” timeline from “the later of” to “the earlier of.” The Florida Justice Association is floating an amendment to require mediation as an alternative to Chapter 558, F.S.

ACTION: HB 583 was amended in H. Civil Justice & Property Rights Subcommittee on Jan. 19 to **repeal Chapter 558, F.S.** SB 736 travels to S. Rules next. We are working towards the goal of the “earlier of” timeline for the statute of limitations/SOR clock, material violation revision and a 6-year statute of repose for residential buildings and townhomes three-stories or less in the Senate proposal.

➤ **Municipal Contraction (Deannexation) Procedures ---[HB 1401](#) by Rep. Persons-Mulicka and [SB 1876](#) by Sen. Perry**

An FHBA initiative, these bills outline requirements that must be followed prior to holding a referendum proposing to contract an area of a municipality. Per SB 1876, if more than 70 percent of the land in an area proposed to be contracted is owned by persons or legal entities that are not registered electors of the area, then the area may only be contracted if the owners of more than 50 percent of the total land area to be contracted consent to the contraction. If the area to be contracted does not have any registered electors then the proponents of contraction must obtain the consent of the owners of more than 50 percent of the total land area before final adoption of the ordinance of contraction. The House Bill will be amended to match the Senate companion.

ACTION: No action this week, however, we learned from meetings with the Senate sponsor there is a request for SB 1876 to be taken up S. Community Affairs next week. We likewise learned from the chair of the H. Local Administration & Veteran Affairs that HB 1401 will likely be heard by the committee in Week 4.

➤ **School Concurrency—[HB 851](#) by Rep. McClain and [SB 706](#) by Sen. Perry**

The initial version of this legislation would require, rather than encourage, local governments that adopt school concurrency to apply concurrency to development on a districtwide basis. The bills

also provide that proportionate-share mitigation may be set

aside and not spent if improvements have not been identified, a sort of “pay-as-you-go” provision.

ACTION: A proposed committee substitute (PCS) to HB 851 was approved unanimously in Local Administration & Veteran Affairs Subcommittee on Jan. 19. The PCS removes the districtwide concurrency and specifies that school concurrency is satisfied if a developer tenders a written, legally-binding commitment to provide mitigation proportionate to the demand for public school facilities generated by the development. The local government must issue a final decision on the legally-tendered binding commitment within 60 days of receipt, and if the local government fails to issue a final decision within 60 days, the legally-binding commitment is deemed approved. SB 706 will be heard on Jan. 25 in S. Community Affairs.

➤ **Notice of Commencement Requirements--[HB 263](#) by Rep. Bell and [SB 352](#) by Sen. Hooper**

HB 263 increases the threshold for application of the Notice of Commencement (NOC) requirements for direct contracts to repair or replace an existing HVAC system from \$7,500 to \$12,500. The bill also requires the NOC issuing authority to verify the address of the contractor listed on the Notice, in addition to the contractor’s name, which is required by current law. The Senate bill increases the threshold from \$7,500 to \$15,000. It does not include the contractor address verification requirement.

ACTION: SB 352 which applies only to HVAC threshold for NOC (increased to \$15K) passed S. Rules unanimously and heads to the Senate floor. HB 263 was amended in H. Judiciary to also increase the exemption for the NOC from the current \$2500 to \$5000 and the bill passed unanimously.

➤ **Florida Building Code & Florida Fire Prevention Code Timing—[HB 659](#) by Rep. Harding and [SB 626](#) by Sen. Wright**

In order to ensure time for training and understanding these bills provide for a delay in implementation for the Florida Building Code and Florida Fire Prevention Code as well as ensuring the Energy Code compliance software is available prior to effective date of a new code. FHBA has been working with the State Fire Marshal’s Office to ensure a 3-month delay and is negotiating with the Dept. of Business & Professional Regulation for a similar solution for the energy compliance software.

ACTION: No action this week. HB 659 will start in H.

Regulatory Reform and SB 626 travels to S. Community Affairs.

- **Constitutional Prohibition Against Lobbying by a Public Officer/CDDs --[HB 7001](#)** by the Rep. Koster & H. Public Integrity & Elections Committee

Another key bill for FHBA, HB 7001 implements the public officer lobbying prohibitions required by a 2018 amendment to the Florida Constitution passed by Florida voters which is slated to take effect on December 31, 2022. The bill defines terms and provides enforcement mechanisms and penalties. HB 7001 defines a “public subdivision” to include a “special district with ad valorem taxing authority,” which could include Community Development Districts. With regard to political subdivisions, the bill defines the term “lobby” to mean “influencing legislative actions or other discretionary decisions, but does not include administrative actions.” The bill also specifies that the term “lobby for compensation” does not include an officer of a governmental entity or other public employee “acting in the normal course of his or her duties.” Violations may be punished by one or more of the following: public censure and reprimand; a civil penalty not to exceed \$10,000; and forfeiture of any pecuniary benefits received for any violation.

ACTION: The bill passed unanimously out of Public Integrity & Elections and now goes to its final committee, H. Rules. FHBA met with bill sponsor to offer an amendment to better clarify that CDD members do not fall under the lobbying definition. No Senate companion has yet been filed.

- **Heat Illness Prevention in Outdoor Work Environments---[HB 887](#)** by Rep. Chambliss and [SB 732](#) by A. Rodriguez

HB 887 and its companion require employers of employees who work primarily outdoors (agriculture, construction, landscaping) to provide drinking water, access to shade, implement an outdoor heat exposure safety program and provide annual training to employees and supervisors on heat illness prevention and treatment. These requirements are supplemental to all related industry-specific standards.

ACTION: SB 732 was reported favorably by S. Agriculture on Jan. 19; HB 887 goes to H. Regulatory Reform first.

➤ **Sales Tax Refund for Building Mitigation**

Improvements---[HB 863](#) by Rep. DiCeglie and [SB 1250](#) by Sen. Gruters

This legislation would provide a sales tax refund on building materials utilized for building mitigation retrofit improvements. Building mitigation improvements installation of a roofing underlayment; roof covering replacement; strengthening of roof-to-wall connections, soffits and attic ventilations; and the installation of impact-resistant windows and entry doors. The bills specify the procedures for validating improvements and submittal for refund of sales tax paid on materials.

ACTION: No action this week. HB 863 will be heard first in H. Regulatory Reform and SB 1250 goes to S. Community Affairs.

➤ **Building Plans---**[HB 635](#) by Rep. Maggard and [SB 1020](#) by Sen. Perry

HB 635 prohibits local governments from making substantive changes to building plans after a permit has been issued, unless the changes are required to bring the plans into compliance with the Building Code or the Fire Prevention Code. If a local government makes substantive changes to building plans, it must notify the permitholder of the specific reasons for the changes. The bill also requires a local fire official to notify a permit applicant if the plans do not comply with the Fire Prevention Code of the specific reasons the plans are not in compliance. The bill also places new restrictions on local governments ability to prevent property owners from demolishing single-family buildings in flood zones. The Senate Bill is much more limited than the current version of the House Bill, and primarily provides that local officials do not have the authority to change building plans that have already been approved and sealed by the local building department.

ACTION: HB 635 was amended in the Regulatory Reform Committee and passed unanimously. SB 1020 awaits its first hearing in the Senate Community Affairs Committee.

➤ **Mandatory Building Inspections---**[SB 1702](#) by Sen. Bradley

SB 1702 includes several of the recommendations from the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force. Specifically the bill requires a milestone inspection for all multifamily residential buildings three-stories or more by December 31 of the year in which the building reaches 30 years old, and every 10 years after the first inspection. For buildings located within 3 miles of the coastline, the inspection period begins at 20 years, with subsequent inspections every 7 years. The inspections do not apply to two-family dwellings or buildings less than 3500 square feet. For buildings occupied before July 1, 1992, the first milestone report is due

by December 31, 2024. The bill outlines the two phases of

the milestone inspection with Phase I being a visual inspection conducted by a licensed architect or engineer to perform a qualitative assessment of the structural conditions of the building. Phase II inspection occurs if structural distress is identified in Phase I, and may only be performed by a special threshold inspector and destructive testing may occur during this phase. Once inspections are completed, the architect, engineer or threshold inspector must send a sealed copy of their report to the building owner, or if a condominium, the condominium administrator, each condominium owner and it must be posted on the website, even if no deficiencies are identified. The report must also be sent to the local building official. The local enforcement agency may establish timelines and penalties and the bill grants the Florida Building Commission the authority to develop structural and life safety standards for maintaining and inspecting all buildings types for local governments to voluntarily adopt.

Action: SB 1702 will be heard in S. Community Affairs on Jan. 25 and it is expected that additional amendments from the RPPTL report may be submitted.