

TORTS-PREMISES LIABILITY-DISCOVERY

In *Publix Supermarkets, Inc. v. Blanco*, 2023 WL 379630 (Fla. 3d DCA, 2023) the Third District Court of Appeals reaffirmed that, following the adoption of Florida Statutes § 768.0755, liability based upon a negligent mode of operation theory is not applicable in premises liability cases involving a slip and fall on a transitory foreign substance, in a business establishment. The court noted that Florida Statutes § 768.0755, was adopted to require proof that the entity which owned or controlled the premises had actual or constructive notice of the alleged defect and to remove language regarding negligent maintenance, inspection, repair, warning, or mode of operation, from the statute.



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Cont'd 2

FLORIDA'S NEW TORT REFORMS EXPAND THE SCOPE OF DAMAGES DISCOVERY

The tort reform law signed on March 24, 2023, made sweeping changes to the scope of damages in a personal injury case. Among many of the reforms, one of the most significant that seeks to balance the evidentiary inequities between the plaintiff and defendant relates to the admissibility of medical bills and bias information related to the use of letters of protection. Before the passage of the law, if a plaintiff had medical insurance and chose to treat under a letter of protection (LOP), the plaintiff could put the entire amount of the LOP bill before the jury, without any consideration to what their health insurance would have paid. Likewise, the fact that the plaintiff was referred by their attorney to a doctor for treatment under an LOP was not admissible. Not anymore.

Under the new law, if the plaintiff has medical insurance and treats under an LOP, they cannot put amounts of past or future medical bills before the jury of more than what their health insurance would have paid. If the plaintiff does not have insurance, the bills are still limited to Medicaid rates. Additionally, the new law only allows evidence of "reasonable

Cont'd 3a

Despite the above, plaintiffs' counsel continues to routinely plead claims for "negligent mode of operation" in these garden variety premises liability suits, in part as a means of later justifying broader discovery requests or fishing expeditions, seeking corporate wide discovery of other accidents or internal policies and procedures with respect to safety protocols and procedures. In *Blanco, supra*, the Court found that because the statute does not permit proof of liability under the negligent mode of operation theory, such corporate-wide discovery requests amount to carte blanche discovery that results in irreparable harm to the defendant and departs from the essential requirements of law. Accordingly, the court quashed the trial court's order which required Publix to provide incident information relating to all Publix stores located in Florida. We recommend that defense counsel timely move to dismiss allegations of negligence based on a negligent mode of operation theory from the complaint, in order minimize future discovery disputes regarding the scope of permissible discovery.

By: Michael J. Roper

AUTO NEGLIGENCE CLAIMS

Car crashes and the resulting auto-negligence claims have become the bread and butter for litigation, especially in Florida's larger, more populated areas. It seems nearly impossible to drive a mile in Orlando, Miami, or Jacksonville without seeing a billboard advertising legal services to a potential client injured in a crash.

During my time as a State Trooper, I noticed a concerning trend where parties to a collision will remain in the roadway. More often, drivers would remain where the collision occurred in order to "preserve evidence" even after being instructed to clear the roadway. Obviously, this is not only dangerous but is also inconvenient to everyone else driving through the area. Drivers seem to be unaware they are risking subsequent crashes and further injuries increases drastically when this happens.

Surprisingly, even after leaving the Highway Patrol, this trend seems to have continued. In the event a driver is involved in a collision where Plaintiff or a third-party fail to remove their vehicle when drivable, Florida Statute § 316.061(2) applies. The relevant language reads "if a damaged vehicle is obstructing traffic, the driver of such vehicle *must* make every reasonable effort to move the vehicle or have it moved so as not to block the regular flow of traffic." The statutory language is clear and unambiguous, drivers are required to remove their crashed vehicles from the roadway. Drivers are required to take reasonable steps to avoid obstructing traffic.

This statute is applicable to shift a Defendant's liability back to the Plaintiff, Co-Defendant, or *Fabre* Defendant in auto negligence cases. "Proof of a violation of a traffic ordinance is prima facie evidence only of negligence, proximate cause, and other elements of

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3a

amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.” This opens the door for evidence that the treatment was not medically necessary and the argument that a given procedure was performed for the financial gain of the provider, and therefore, the jury should not award damages for it.

Consequently, the defense can now look deeper into the plaintiff’s medical treatment, the medical bills and the relationships between the doctor and the plaintiff’s attorney. For paid medical bills, this includes the amounts charged, the billing codes used by the provider, the source of the billing codes, the amount paid by any health insurer or other third party, and the amount, if any, the plaintiff is obligated to pay. For the more common circumstance with unpaid medical bills through an LOP, the defense can look into the amount charged, the relevant billing codes and source, and most importantly, the identity of the person or attorney who made the referral. This also pulls back the curtain on how often the plaintiff’s attorney referred to that provider and the financial relationship, including number of referrals, frequency, and financial benefits received by the provider. If the provider transferred its right to receive payment under the LOP or sold the account to a third party, inquiry into the amount the third party paid for that account and any discount below the account total is now fair game. Where the plaintiff used an LOP but had private health insurance coverage, Medicare or Medicaid, discovery is now open into what the health care coverage would have paid to satisfy the charge and the plaintiff’s share of those expenses. As the plaintiff has the burden to prove their damages, the plaintiff is obligated to itemize and code the charges for the reasonable and medically necessary expenses to come into evidence.

For cases filed after March 24, 2023, these changes create an entirely new burden for a plaintiff to submit their claimed medical expenses to a jury and new landscape for the defense to challenge inflated medical expenses and bias. This will necessitate diligence on the defense to ensure only the appropriate amounts are submitted to the jury. In other words, double checking the plaintiff’s sources and calculations. This may include confirming the proper billing rates are used from the applicable databases to evaluate the accurate reimbursement rates. It may be necessary to retain the services of a billing and coding expert, particularly in cases involving extensive medical treatment with multiple rounds of injections and surgeries, to prevent inflated medical expenses from coming into evidence. While this will require some additional work on the defense side, the impact to potential jury verdicts is likely to be significant.

By: Jennifer C. Barron

3b

actionable negligence.” *DeJesus v. Seaboard Coast Line R. Co.*, 281 So.2d 198, 201 (Fla. 1973). Therefore, providing the possibility of reducing a Defendant’s liability by another party’s fault.

Clients whose employees regularly engage in driving operations would be well advised to include training on this area of Florida Law. It might seem obvious that removing a crashed vehicle from a busy roadway is the appropriate step to take. However, based on personal experience, this does not appear to be the case. If you have any questions or concerns, please feel free to contact me.

By: David A. Belford

2023 REGULAR LEGISLATIVE SESSION UPDATE

This year, the 60-day get together of Florida's Legislature wrapped up on May 5, 2023, with lawmakers approving a 117 Billion Dollar State budget. Interestingly, the session has been described as both a "historic success with the Legislature passing groundbreaking and nation-leading legislation" and one which "generated huge amounts of controversy, polarization and headlines." Regardless of the view you take, local government regulation seemed to be at the forefront. Notable portions of successful legislation which is sure to have an impact on local government entities is set forth hereafter.

Preemption Over Utility Service Restrictions

CS/CS/HB 1281

Prohibits a local government from enacting or enforcing an ordinance, resolution, rule, code or policy, or from taking any action that restricts or prohibits or has the effect of restricting or prohibiting the use of any major appliances, including stoves and gas grills. The bill exempts local government actions and regulations necessary to implement the Florida Building Code and the Florida Fire Prevention Code.

Effective date: July 1, 2023

Approved by Governor:

Environmental Protection

CS/CS/HB 1379

Imposes new requirements and restrictions on local governments relating to pollutant load reduction, local government comprehensive plans, basin management action plans, onsite sewage treatment and disposal systems, mandatory connection to central sewer systems, septic system and wastewater treatment facility remediation plans, and advanced waste treatment systems.

Comprehensive Plans and Capital Improvements Schedule

The bill requires counties and municipalities within a BMAP area to include in their comprehensive plans' capital improvements schedules a list of projects necessary to achieve the pollutant load reductions attributable to the local government pursuant to a basin management action plan. It also requires counties and municipalities to include within their comprehensive plans' potable water, drainage, sewer, solid waste, and aquifer recharge element a consideration of the feasibility of providing sanitary sewer services within a 10-year planning horizon to any group of more than 50 built or unbuilt residential lots with a density of more than one septic tank per acre. It further specifies that counties and municipalities should also address within that comprehensive plan element the coordination of the treatment or upgrade of facilities providing such services and to prioritize advanced waste treatment. These comprehensive plan updates must be made by July 1, 2024. Local governments within a Rural Area of Opportunity are exempted from these new requirements.

Effective date: July 1, 2023

Approved by Governor: May 30, 2023; Laws of Florida, Chapter 2023-169

Cont'd 5

Funeral Service Benefits for Public Safety Officers

CS/CS/HB 535

Authorizes the head of a law enforcement agency to grant up to eight hours of administrative leave to a law enforcement officer in order for the officer to attend a funeral service within Florida of another officer who was killed in the line of duty. Leave may be denied, if necessary, to maintain minimum or adequate staffing requirements. In addition, the head of a law enforcement agency may authorize travel expenses for a law enforcement officer to attend such funeral service.

Effective date: October 1, 2023

Approved by Governor: May 25, 2023; Laws of Florida, Chapter 2023-145

Rights of Law Enforcement Officers & Correctional Officers

CS/HB 95

Amends Florida Statutes, Section 112.532, to prohibit a law enforcement or correctional officer's employing agency from discharging, suspending, demoting, or otherwise disciplining an officer solely as a result of a prosecuting agency determining the officer withheld exculpatory evidence or because his or her name was included in a Brady identification system. It does not prevent the employing agency from taking disciplinary action based on the underlying actions of the officer. The bill creates Florida Statutes, Section 112.536, which requires a prosecuting agency that maintains a Brady identification system to adopt policies outlining protections for officers, which must include: the right of an officer to receive written notice that a prosecuting agency has included the officer in a Brady identification system; and the right of an officer to request reconsideration of the prosecuting agency's decision to include the officer in a Brady identification system and his or her right to submit evidence in support of the request for reconsideration. If the prosecuting agency determines the officer should not be included in the Brady identification system, the agency must remove the officer's name and send notice to the officer's employing agency confirming the removal. If an officer's name was previously included in a Brady identification system and his or her name was disclosed in a pending criminal case, the prosecuting agency must notify all parties to the pending case of the officer's removal from the system. An officer may petition the court for a writ of mandamus to compel the prosecuting agency to comply with the bill's requirements.

Effective date: July 1, 2023

Approved by Governor:

Employee Organizations Representing Public Employees

CS/CS/SB 256

Requires a public employee who desires to be a member of an employee organization to sign and date a membership authorization form, as prescribed by the Public Employee Relations Commission (PERC), with the bargaining agent. The bill specifies the minimum content to be included in the membership authorization form. It authorizes a public employee to revoke membership in the employee organization at any time and without reason. The bill's

Cont'd 6

provisions do not apply to employee organizations that have been certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters. The bill authorizes additional procedures for employee organizations that represent mass transit employees to avoid conflict with federal funding requirements. The bill prohibits an employee organization that has been certified as a bargaining agent from having its dues and uniform assessments deducted and collected by the employer from employee salaries. Organizations representing law enforcement officers, correctional officers, correctional probation officers, and firefighters are exempted from this prohibition. The bill expands the information required in an employee organization's annual registration renewal with PERC. In addition, the bill specifies that an employee organization that had less than 60 percent participation by eligible employees must petition PERC for recertification. It authorizes public employers or an employee who is eligible for representation to challenge an employee organization's application for registration renewal under specified conditions, but specifies that organizations representing law enforcement, correctional officers, correctional probation officers, or firefighters are exempt from this provision. It also requires the certified collective bargaining agent to provide certain information to its members, including the annual costs of membership. The bill prohibits employee organizations from offering anything of value to a public officer as defined in Florida Statutes, Section 112.313, which the public officer is prohibited from accepting under that section and prohibits such organizations from offering any compensation or thing of value to a public officer which the public officer is prohibited from accepting.

Effective date: Upon becoming law except as otherwise provided.

Approved by Governor: May 9, 2023; Laws of Florida, Chapter 2023-35

Chiefs of Police

CS/CS/HB 935

Prohibits a municipality from terminating a chief of police without providing the chief a written notice of the termination. After a chief receives a notice of termination, a municipality must provide an opportunity for the chief to appear at the next regularly scheduled public meeting of the governing body of the municipality and provide a response to the termination. The bill also prohibits an employment contract between a municipality and a chief of police from waiving or modifying any requirements of the bill or including a nondisclosure clause that prohibits a chief from responding to the termination at a public meeting.

Effective date: July 1, 2023

Approved by Governor:

Ethics Requirements for Public Officials

CS/CS/SB 774

Requires elected mayors and elected members of the governing body of a municipality, as well as candidates for such offices and members of the Florida Commission on Ethics, to file an annual full disclosure of financial interests (Form 6), beginning January 1, 2024.

Effective date: Upon becoming law except as otherwise specified.

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-49

Cont'd 7

Residency of Local Elected Officials

HB 411

Imposes new requirements for the redistricting of school board member districts, municipal districts, and county districts. The bill prohibits county commission districts, municipal districts, and school board member residence areas from being drawn with the intent to favor or disfavor a candidate for the governing body or an incumbent member of the governing body. It requires county, municipal and school board member districts to be as nearly equal in population as possible. The bill also specifies that changes to county, municipal, or school board member districts may not be made in the 270 days before the respective general elections of a county, municipality, or school board. The bill voids any county ordinance, municipal ordinance, or school district resolution adopted on or after July 1, 2023, that conflicts with the bill's requirements.

Effective date: July 1, 2023

Approved by Governor: May 17, 2023; Laws of Florida, Chapter 2023-101

Local Ordinances

CS/CS/SB 170

Imposes new requirements on counties and municipalities for adopting and enforcing ordinances. **(1)** a local government must prepare a business impact estimate before adopting an ordinance with minimum content that must be included in the statement. The bill exempts the following ordinances from this requirement: ordinances required to comply with federal or state laws or regulations; ordinances relating to the issuance or refinancing of debt; ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget; ordinances required to implement a contract or agreement, including grants or financial assistance; emergency ordinances; ordinances relating to procurement; ordinances enacted to implement Part II, Ch. 163, including land development regulations, zoning, development orders, development agreements, and development permits; ordinances enacted to implement Sections 190.005 and 190.046 (CDDs); ordinances enacted to implement the Florida Building Code; and ordinances enacted to implement the Florida Fire Prevention Code. The business impact estimate must be posted on the local government's website no later than the date of publication of notice of the proposed ordinance. **(2)** a local government must 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 local government was served with a copy of the complaint. If the local government prevails in the civil action, it may enforce the ordinance unless the plaintiff appeals the decision and obtains a stay of enforcement from the court. **(3)** awards 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

Cont'd 8

enforcement of an ordinance is suspended. The bill exempts ordinances listed above from the stay of enforcement provision. Finally, the bill clarifies that consideration of an ordinance properly noticed may be continued to a subsequent meeting if the date, time, and place of the subsequent meeting is publicly stated. This provision is retroactive.

Effective date: October 1, 2023, except as otherwise specified.

Approved by Governor:

Interests of Foreign Countries

CS/CS/SB 264

Restricts the issuance of government contracts or economic development incentives to foreign entities that are owned by, controlled by, or organized under the laws of a foreign country of concern (i.e., the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan Regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or other entity within significant control of such foreign country of concern).

Effective date: July 1, 2023

Approved by Governor: May 8, 2023; Laws of Florida, Chapter 2023-33

County Constitutional Officers

HB 1373

Prohibits a county from creating or expanding the powers or authority of any office, special district, or governmental unit if the purpose of such creation or expansion is to exercise any power or authority allocated exclusively to a county constitutional officer by the Florida Constitution or general law. **Any county commissioner who votes in favor of a proposed ordinance for such a creation or expansion of powers is guilty of misfeasance or malfeasance in office.** The bill provides that if a county adopts such an ordinance, the state may withhold all or part of any distribution under local government revenue sharing, which is otherwise allocable to the county, other than any distribution exclusively for school purposes or required for existing bond debt service, during the period such ordinance is in force. In addition, the bill authorizes a county constitutional officer or a resident of the county to bring an action in circuit court against a county that adopts such an ordinance. The bill authorizes a court to enter a judgment awarding declaratory and injunctive relief, damages, costs, and reasonable attorney fees to a prevailing county constitutional officer or resident of the county. The bill prohibits a county from including funding within its budget for any office, special district, or governmental unit that is exercising any power or authority allocated exclusively to a county constitutional officer by the Florida constitution or general law.

Effective date: July 1, 2023.

Approved by Governor:

Cont'd 9

Facility Requirements Based on Sex

CS/SB 1521

Creates Florida Statutes, Section 553.865 - "Safety in Private Spaces Act," with the purpose and intent as providing restrooms and changing facilities for exclusive use by females or males, respective to their sex, in order to maintain public safety, decency, decorum, and privacy.

- Establishes a procedure for notifying an authorized person with a Covered Entity that a person of the opposite sex has entered a restroom or changing facility designated for exclusive use for females or males. The bill does not apply to persons born with a medically verifiable genetic disorder of sexual development under treatment by a physician, with specified conditions.
- Defines these terms:
 - "Female" means "a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs;" and
 - "Male" means "a person belonging, at birth, to the biological sex which has the specific reproductive role of producing sperm."
- Specifies the term "Covered Entity" means state adult correctional institutions, educational facilities (K-12 to university level), juvenile correctional facilities and secure detention centers, county and city detention facilities (jails), and public buildings that are owned or leased by the state, a state agency, or a county, city, or special district.
- Sets forth the circumstances in which entry to a restroom or changing facility designated for the opposite sex on the premises of a covered entity is appropriate:
 - To accompany a person of the opposite sex to assist or chaperone a child under 12 years of age, an elderly person, or a person with a disability or developmental disability;
 - For law enforcement or governmental regulatory purposes;
 - For rendering emergency medical assistance or intervening in any other emergency situation where the health or safety of another person is at risk;
 - For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use; or
 - If the appropriate designated restroom or changing facility is out of order or under repair, and the restroom or changing facility designated for the opposite sex contains no person of the opposite sex.
- Specifies by type of Covered Entity, the persons who are authorized to request that another person depart from a restroom or changing facility on the premises of a Covered Entity, designated for the opposite sex.

Cont'd 10

- Requires Covered Entities that maintain a water closet (toilet or urinal) or a changing facility (dressing room, fitting room, locker room, changing room, or shower room) to have, at a minimum:

- Restrooms or changing facilities that are designated for exclusive use by females and for exclusive use by males; or
- A unisex restroom or changing facility (intended for a single-occupant or a family in which a person may be in a state of undress, enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the room is in use).

- Requires each type of covered entity to apply existing disciplinary procedures or establish disciplinary procedures or policies, as applicable, for employees, certain persons under its control, and other personnel described in the bill who willfully enter a restroom or changing facility designated for the opposite sex on the premises of the covered entity, for a purpose other than the authorized uses listed in the bill, and who refuse to depart when asked to do so by an authorized person.

- Provides that any person who willfully enters a restroom or changing facility designated for the opposite sex on the premises of a Covered Entity, for a purpose other than the authorized uses listed in the bill, who refuses to depart when asked to do so by a person authorized to make such a request, commits the criminal offense of trespass. Certain employees, staff, and others authorized to be on the premises of a covered entity are not subject to this provision.

- Requires each educational institution to establish in its code of student conduct disciplinary procedures for any student who willfully enters a restroom or changing facility designated for the opposite sex on the premises of the educational institution, for a purpose other than the authorized uses listed in the bill and refuses to depart when asked to do so by an authorized person.

- Requires Covered Entities to submit documentation regarding compliance with the minimum requirements for restrooms and changing facilities, if applicable, within one year after being established or, if the institution or facility was established before July 1, 2023, no later than April 1, 2024, to the Board of Governors, the Department of Corrections, the Department of Juvenile Justice, or the State Board of Education, as applicable.

- Provides that beginning July 1, 2024, a person may submit a complaint to the Attorney General alleging that a Covered Entity failed to meet the minimum requirements for restrooms and changing facilities required by the bill, and that failure to comply with the minimum requirements for restrooms and changing facilities subjects a covered entity to licensure or regulatory disciplinary action.

- Authorizes the Attorney General to take enforcement action against Covered Entities through the judicial system beginning July 1, 2024, by seeking injunctive relief, and by seeking a fine of up to \$10,000 for any covered entity found to have willfully violated the requirements in the bill.

Cont'd 11

Effective date: July 1, 2023

Approved by Governor: May 17, 2023; Laws of Florida, Chapter 2023-106

Technology Transparency

CS/CS/SB 262

Prohibits employees of a governmental entity from using their position or any state resources to communicate with a social media platform to request that it remove content or accounts. In addition, a governmental entity may not initiate or maintain any agreements with a social media platform for the purpose of content moderation. The prohibitions do not apply to routine account maintenance, attempts to remove accounts or content pertaining to the commission of a crime, or efforts to prevent imminent bodily harm, loss of life, or property damage.

Effective date: July 1, 2023

Approved by Governor:

Housing

CS/SB 102

Creates the Live Local Act to address Florida's affordable housing needs.

Zoning and Land Use Controls & Local Government Requirements:

- For a 10-year period, cities and counties are required to allow multifamily rental and mixed use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40% of the units are affordable to income-eligible households for at least 30 years. For mixed use projects, at least 65% of the total square footage must be used for residential purposes. The local government may not require the proposed project to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the height, densities, and zoning authorized by the bill.

- A local government may not restrict the height of an eligible project below the tallest currently allowed height for a commercial or residential development in the jurisdiction within 1 mile of the proposed project, or 3 stories, whichever is higher.
- A local government may not restrict the density of an eligible project below the highest allowable density in the jurisdiction where residential development is allowed.
- Applications for eligible projects must be administratively approved by the local government with no further action by the governing body if the project satisfies applicable land development regulations and comprehensive plan requirements for mixed-use residential developments.
- A local government must consider reducing parking requirements for eligible projects if the proposal is located within ½ mile of a “major transit stop” (as defined by the local government).
- Cities and certain counties with less than 20 percent of land zoned for commercial or industrial uses are only subject to these requirements for mixed-use developments (exclusively residential projects would not be eligible).

Cont'd 12

- Recreational and commercial working waterfront areas are exempt.
- The proposed project must otherwise comply with applicable state and local laws.

- Florida Statutes, Sections 125.01055(6) and 166.04151(6) currently authorize local governments to allow affordable housing developments on any parcel zoned residential, commercial, or industrial notwithstanding any other law to the contrary. The bill removes areas zoned residential from this provision.

- Requires cities and counties, as well as independent special districts within local governments, to post annually an inventory of city and county owned lands appropriate for use as affordable housing on their websites.

- Prohibits cities and counties from enacting rent control requirements.

- Requires cities and counties to post on their websites policies for implementing state laws that require expedited processing of building permits and development orders.

Effective date: July 1, 2023, except as otherwise specified.

Approved by Governor: March 29, 2023; Laws of Florida, Chapter 2023-17

Drone Delivery Services

CS/CS/CS/SB 1068

Prohibits a political subdivision from withholding the issuance of a business tax receipt or development permit, or enacting or enforcing an ordinance or resolution prohibiting a drone delivery service's operation based on the location of the delivery service's drone port, but does allow political subdivisions to enforce generally applicable minimum setback and landscaping regulations. The bill exempts drone ports, except for their stairwells, from the Florida Building Code, as well as from provisions concerning fire protection systems of the Florida Fire Prevention Code. The bill defines "drone delivery service" as a person engaged in the business of delivering goods via drone and who is covered by the Small Unmanned Aircraft Systems Rule. It defines "drone port" as a stand-alone building that does not exceed 1,500 square feet in area or 36 feet in height, is located in a nonresidential area, is used by a drone delivery service for the launch and landing of drones, was constructed using Type I or Type II construction as described in the Florida Building Code, and, if greater than one story in height, includes at least one stairwell that may be used for egress.

Effective date: July 1, 2023

Approved by Governor: May 25, 2023; Laws of Florida, Chapter 2023-137

Cont'd 13

Local Government Comprehensive Plans

CS/CS/SB 540

Allows the prevailing party in a legal challenge to a comprehensive plan or plan amendment to recover attorney fees and costs, including reasonable appellate fees and costs. The bill resolves a split among Florida District Courts of Appeal by clarifying the scope of review under Florida Statutes, Section 163.3215, for a local government to grant or deny a development order by providing the order may be challenged only if it would materially alter the use, density, or intensity of the property in a manner not consistent with the comprehensive plan. Finally, the bill prohibits local governments from enforcing any land development regulations, other than those relating to density and intensity, against any of the institutions within the Florida College System.

Effective date: July 1, 2023

Approved by Governor: May 24, 2023; Laws of Florida, Chapter 2023-115

Annexation and Contraction

CS/CS/SB 718

Revises procedures for municipal annexation and contraction, and local government initiatives and referenda. It identifies the “report” that must be prepared prior to annexation or contraction as a “feasibility” study conducted by qualified staff or consultants and provides that such study must analyze the economic, market, technical, financial, and management feasibility of a proposed annexation or contraction. The bill removes the requirement for contractions that a municipality provide specific findings when rejecting a petition from voters requesting exclusion from municipal boundaries. It also specifies that a governing body’s rejection of a petition for contraction is a legislative decision. For instances in which more than 70 percent of the acres proposed for contraction are owned by private entities that are not registered electors, the bill specifies that the owners of a majority of the acreage consent to the contraction. This change applies to contraction petitions filed on or after July 1, 2023. Lastly, the bill prohibits local governments from requiring an initiative and referendum process for amending land development regulations.

Effective date: July 1, 2023

Approved by Governor:

Land Use and Development Regulations

CS/CS/SB 1604

Makes a variety of changes relating to comprehensive plans and land development regulations.

Required Planning Periods for Comprehensive Plans

The bill revises the two statutory required planning periods that must be covered in a local government comprehensive plan from 5 to 10 years and from 10 to 20 years.

Cont'd 14

Evaluation and Appraisal Reports, EAR-based Amendments & Population Projections

With respect to Evaluation and Appraisal Reports (EAR), the bill requires that when local governments notify the state land planning agency of a determination whether EAR-based plan amendments are needed, the notification must include a separate affidavit, signed by the chair or mayor of the governing body, attesting that all elements of its comprehensive plan comply with Florida Statutes, Section 163.3191. The affidavit must also certify that the adopted plan covers the minimum 10-year planning period and cite the source and date of the population projections used in establishing the 10-year planning period. The bill requires, rather than encourages, local governments to update plans to reflect changes in local conditions and specifies that updates to the required elements and optional elements of the plan be processed in the same amendment cycle. It specifies that if a local government fails to submit the letter and affidavit to the state land planning agency, or fails to transmit the update to its plan within one year after the date the letter was transmitted to the state, the local government may not initiate or adopt any publicly initiated plan amendments until such time it complies with the requirements. It provides that failure of a local government to timely update its plan may not be the basis for the denial of privately initiated plan amendments. If a local government fails to update its plan pursuant to state law, the state land planning agency must provide the required population projections to the local government. The local government must initiate an update to its plan within three months following receipt of the projections and shall transmit the update within 12 months. The bill authorizes local governments to provide alternative population projections based on professionally accepted methodologies, but only if those projections exceed the projections provided by the state.

Regulation of Single-Family or Two-Family Residential Design Elements

In 2022, the legislature amended Florida Statutes, Section 163.3202, to prohibit local governments from regulating building design elements for single-family and two-family homes, with specified exceptions. The bill narrows two of the current law exceptions relating to planned unit developments and architectural review boards, by specifying the exception applies only to planned unit developments approved before July 2023, and architectural review boards created before January 2020.

Effective date: July 1, 2023, except as otherwise provided

Approved by Governor: May 7, 2023; Laws of Florida, Chapter 2023-31

National Public Safety Broadband Network

SB 7006

Renews the exemption from public records requirements for information held by an agency relating to the Nationwide Public Safety Broadband Network.

Effective date: October 1, 2023

Approved by Governor: May 24, 2023; Laws of Florida, Chapter 2023-119

Cont'd 15

Building Plans, Blueprints, Schematic Drawings, and Diagrams

SB 7008

Renews the exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development.

Effective date: October 1, 2023

Approved by Governor:

Address of a Victim of an Incident of Mass Violence

HB 7031

Removes the scheduled repeal of the current exemption from public records requirements for addresses of victims of an incident of mass violence.

Effective date: October 1, 2023

Approved by Governor: May, 17, 2023; Laws of Florida, Chapter 2023-107

Photograph or Video or Audio Recording of the Killing of a Minor/Autopsy Records of Minors

CS/SB 404

Creates, with specified exceptions, an exemption from public records requirements for a photograph or video or audio recording of the killing of a minor. In addition, the bill creates an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence.

Effective date: Upon becoming law

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-44

Persons with Disabilities Registry

CS/HB 1277

Exempts from public records requirements all records and personal identifying information relating to enrollment of persons in a special persons registry and persons enrolled in a special persons registry held by a local law enforcement agency. It authorizes local law enforcement agencies to disclose confidential and exempt information to certain persons under certain circumstances and provides for the exempt status of such information held by those individuals and entities to be maintained.

Effective date: On the date HB 1275 takes effect (June 1, 2024)

Approved by Governor:

Cont'd 16

Security and Fire Safety System Plans

HB 7007

Removes the scheduled repeal date of the public record and public meeting exemptions for security or fire safety system plans under Florida Statutes, Sections 119.071(3)(a) and 286.0113(1). The bill repeals Florida Statutes, Section 281.301, because the information and meetings protected under this section were deemed duplicative of the exemptions in Florida Statutes, Sections 119.071(3)(a) and 286.0113(1).

Effective date: October 1, 2023

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-75

Protection from Discrimination Based on Health Care Choices

CS/CS/SB 238

Provides an exemption from public records requirements for certain information held by the Department of Legal Affairs or the Department of Health relating to complaints or investigations regarding violations of provisions protecting from discrimination based on health care choices (e.g., COVID-19 vaccination or post-infection recovery status). The bill authorizes disclosure of the information under specified circumstances. This bill is a companion measure to SB 252, which prohibits private and public entities from, among other things, discriminating against persons based on COVID-19 vaccination status or post-infection recovery status.

Effective date: On the date that SB 252 takes effect (June 1, 2023)

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-42

Transportation and Protective Services

CS/SB 1616

Exempts from public records requirements records held by a law enforcement agency relating to security and transportation services provided for the Governor, the Governor's immediate family, visiting governors and their families, and other persons as requested by specified state officials, and the Governor's office and mansion.

Effective date: Upon becoming a law (applies retroactively)

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-58

Mobile Suspicious Activity Reporting Tool

CS/SB 7020

Saves from repeal the current exemption from public records requirements relating to the identity of the reporting party and any other information received through the mobile suspicious reporting activity tool and held by the Florida Department of Law Enforcement, law enforcement agencies, or school officials. The bill adds to the exemption such records held by the Florida Department of Education.

Cont'd 17

Effective date: Upon becoming law

Approved by Governor: May 11, 2023; Laws of Florida, Chapter 2023-60

Lactation Spaces

SB 144

Requires each county courthouse to provide at least one lactation space, outside of a restroom, for members of the public to breastfeed. The lactation space must be available by January 1, 2024, with specific requirements and exceptions.

Effective date: July 1, 2023.

Approved by Governor: May 17, 2023; Laws of Florida, Chapter 2023-88

Prohibited Applications on Government-Issued Devices

CS/CS/SB 258

Requires governmental entities to block all prohibited applications on government-issued devices (e.g., cell phones, laptops, or other electronic devices), restrict access to prohibited applications on a government-issued device, and retain the ability remotely wipe and uninstall any prohibited application from a compromised government-issued device. The term “prohibited application” is defined as any Internet application that is created, maintained, or owned by a foreign principal of a foreign county of concern and that participates in activities that endanger cybersecurity; or any Internet application that the Department of Management Services (DMS) deems to present a security risk in the form of an unauthorized access to or temporary unavailability of the public employer’s records, digital assets, systems, networks, servers, or information. The bill prohibits any person, including an officer or employee of a public employer, from downloading or accessing a prohibited application on a government-issued device. The prohibition does not apply to a law enforcement officer if the use of the prohibited application is necessary to protect safety or to conduct an investigation within the scope of the officer’s employment. An employee or officer of public employer may apply to the DMS for a waiver of the prohibition. DMS is tasked with compiling and maintaining a list of prohibited applications and publish the list on its website. DMS is also required to update the list quarterly and provide notice of any update to public employers. Within 15 days after receiving notice of a list update, an employee or officer of a public employer must remove, delete, or uninstall any prohibited application from his or her government issued device. DMS must establish procedures for granting or denying waivers applied for by government officials or employees seeking to download or access a prohibited application based on the disclosures required to be made in the waiver application submitted to DMS.

Effective date: July 1, 2023

Approved by Governor: May 8, 2023; Laws of Florida, Chapter 2023-32

If you have any questions regarding any of these bills or the impacts of the same, you should contact your general counsel or feel free to contact our office directly.

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