OPPOSE CS/SB 1000 & CS/HB 693

Support Municipal Efforts to Deploy Telecommunications Infrastructure

The Florida League of Cities calls on the Florida Legislature to stop efforts to further strip cities of the ability to regulate the placement of communications equipment on city property and in public rights-of-way.

KEY POINTS

- **Don't undermine progress.** It's been less than two years since the Legislature passed its comprehensive takeover of municipal rights-of-way relating to wireless infrastructure. Cities are diligently working with industry representatives to implement that law. Changing the rules now will only set back progress.
- **New poles should not be automatically allowed.** Cities are purposely limiting potential projectile in our hurricane-prone communities by moving utility lines underground. Existing law recognizes this and allows cities to negotiate placement of telecommunications equipment accordingly. Undoing this consideration flies in the face of existing, and expensive, efforts to protect residents and keep services connected.
- **'Fast passing' one utility over another is simply not fair.** Allowing communications services providers to go to the front of the line in the permit process means other utility providers, such as electric or wastewater, lose out. Public officials should prioritize what communities need, not what special interests want.
- **The intent for wireless deployment has not changed. Why should the law?** Two years ago, the stated goal of the industry was to expediate small cell wireless infrastructure in communities across the state. Cities are doing their part and doing it successfully. It's time for the Legislature to support that progress.

The way we communicate with one another is changing. Mobile phones, tablets, smartwatches and other small wireless gadgets are becoming ubiquitous. Wireless data consumption is now being measured in exabytes and projected to grow sixfold in the next three years. Our infrastructure to support this demand for wireless connectivity and data consumption must keep pace. Prior to 2017, local governments negotiated agreements directly with the wireless industry for placement of antennas and equipment. Then, two years ago, the Florida Legislature passed the Advanced Wireless Infrastructure Deployment Act that severely restricted local negotiations. However, local governments did retain the ability to apply certain local rules and regulations governing the placement of utility poles in the public rights-of-way. New efforts to undermine this law and threaten progress should be defeated.

Cities are successfully deploying communications infrastructure unique to their community's design standards and preferences. Protect progress.

For more information, contact Amber Hughes at (850) 701-3621 or *ahughes@flcities.com*.

PRIORITIZE COMMUNITY NEEDS

Do Not Create a Backdoor for Special Interests in the Bert Harris Act

The Florida League of Cities calls on the Florida Legislature to oppose substantive changes to the Bert J. Harris Jr. Property Rights Protection Act.

KEY POINTS

- **Protect residents, not special interests.** Special interest groups are attempting to manipulate the Bert J. Harris Jr. Property Rights Protection Act to bring about universal policy change for personal gain, leaving taxpayers to pay the bill. The Legislature should prioritize what communities need, not what special interests want.
- **The process is deliberate by design.** Bert Harris claims purposefully follow a well-detailed process to ensure each claim meets the standards set forth in Florida law and does not adversely affect the property rights of other property owners. A variance is designed to be an exception to the rule with just cause, not become the rule itself.
- **Universal application of a variance has unintended consequences.** If you apply a variance to all similarly situated properties, you run the risk of increased strain on supporting infrastructure, exacerbating environmental concerns and creating a knock-on effect on adjacent properties.
- **Changes to current law will hinder development.** The Bert Harris Act currently provides a timeline for potential claims. This timeline allows cities to work with affected parties before commencing with a growth or redevelopment project contained in a community's comprehensive plan. Changes to that timeline could dramatically impact the ability of a community to forge ahead with smart growth.

The Bert J. Harris Act of 1995 was created to give landowners an avenue for seeking compensation when a local government takes action that impacts the real or potential use of their property. Claims are usually related to a reduction in fair market value or potential market value. A "variance" is sometimes granted in lieu of compensation. This negotiated pass, in essence, exempts the property owner from complying with the local action that resulted in the claim or sets up a set of special rules for the impacted property. The Act is both detailed and fair. It allows local governments to negotiate directly with property owners filing a claim and calls on the judicial system to consider the unique conditions of each claim. While Bert Harris claims are frequent, many are negotiated locally without going to trial, which saves taxpayer dollars and proves that the system in place is working.

Changing the intent of the Bert J. Harris Act is shortsighted and dangerous. Prioritize community needs.

For more information, contact David Cruz at (850) 701-3676 or *dcruz@flcities.com*.

SUPPORT ECONOMIC DEVELOPMENT

Protect the Existence and Creation of Community Redevelopment Agencies

The Florida League of Cities calls on the Florida Legislature to protect a city's right to use community redevelopment agencies to upgrade infrastructure, create jobs, strengthen public safety and build community.

KEY POINTS

- **CRAs are uniquely local.** The conditions of blight look different from community to community. CRAs give cities the flexibility they need to implement uniquely local solutions.
- **CRAs improve communities without additional taxes.** CRAs improve communities without additional taxes. CRAs reinvest local property taxes from a designated area back into that same area, solving local challenges with local dollars.
- **CRAs promote stability.** CRAs develop long-term plans that are compatible with an area's comprehensive plans. Businesses are, therefore, more confident in their decision to relocate or invest in the area.
- **CRAs operate with transparency.** Currently, CRAs report annually to state and local government on their activities, budget and administration. They are required to complete five annual reports. Any new investments must conform to the redevelopment plan.

Community redevelopment agencies and tax increment financing have been integral tools for municipalities to provide improvements to run-down urban cores for more than 30 years. There are 222 active CRAs in Florida. They were established to encourage new investment and job creation in urban areas that were blighted as a result of substantial growth moving away from the urban core. Under Florida law (Chapter 163, Part III), local governments are able to designate areas as CRAs when certain conditions exist: the presence of substandard or inadequate structures, a shortage of affordable housing, inadequate infrastructure, insufficient roadways and inadequate parking.

CRAs often play a significant role in creating affordable housing. CRAs have built flood-control, water and sewage projects that protect neighborhoods. CRAs transform streetscapes by eliminating traffic obstacles, adding features that attract people, encouraging new business and discouraging crime.

CRAs are critical to Florida's economy, safety and quality of life. Preserve this vital tool.

For more information, contact David Cruz at (850) 701-3676 or *dcruz@flcities.com*.

PROTECT LOCAL NEIGHBORHOODS

Restore Local Zoning Authority for Short-Term Rentals

The Florida League of Cities calls on the Florida Legislature to restore local zoning authority for short-term rentals, thereby preserving the integrity of Florida's residential neighborhoods, and to reject any legislation that further preempts municipal authority of short-term rentals.

KEY POINTS

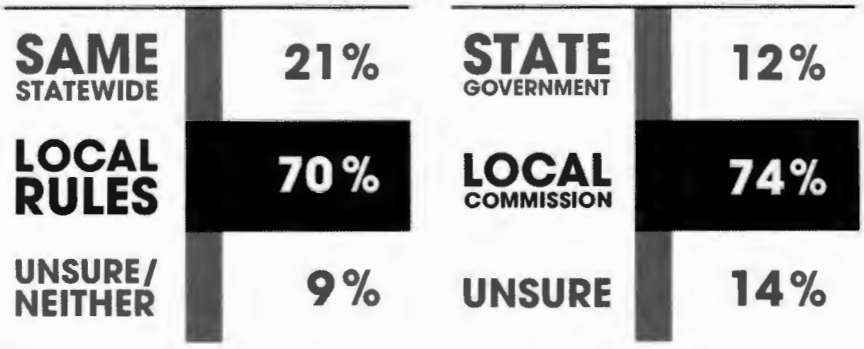
- **This is a local zoning issue.** Commercial activity in residential neighborhoods is regulated for good reason: to protect residents and ensure adequate infrastructure is in place.
- **A solution is needed that balances the property rights of all.** Issues with unruly behavior, parking and public safety are destroying the residential character of traditional neighborhoods. Residents suffer while corporations profit.
- **The ripple effect of unregulated short-term rentals is exacerbating the affordable housing crisis.** Homes are being converted into mini-hotels, thereby reducing long-term rental stock available in communities and causing a workforce housing shortage.

A short-term rental is defined as a property that is rented more than three times a year for less than 30 days at a time and is advertised as such. Thanks to the sharing economy, large-scale investors now dominate the home rental market. Real estate investment groups have been buying up the housing stock and converting single-family homes designed for four into mini-hotels that sleep 26. Because renters turn over frequently, the homes are considered "short-term rentals" and the investment companies circumvent the usual regulations that traditional hotels and lodging establishments are held to.

The proliferation of these converted rentals are overtaking residential neighborhoods and posing significant **public safety risks**. Residents no longer know the people next door. Neighbors are less likely to confront strangers when problematic or nuisance behavior presents itself. Sex offenders are not required to register. The result? Long-time residents are moving out.

Cities must be able to rely on their zoning authority to keep commercial activity out of residential neighborhoods.

Seven in 10 voters say local rules should govern short-term rentals. And nearly 3/4 want local elected officials in charge.



For more information, contact Casey Cook at 850-701-3609 or *ccook@flcities.com.*

PROTECT LOCAL DECISIONS

Let Cities Regulate E-Scooters to Preserve Public Safety

The Florida League of Cities calls on the Florida Legislature to allow cities to exercise their authority to regulate micromobility devices and share programs, such as e-scooters, in order to protect public safety.

KEY POINTS

- **Injuries are on the rise.** There have been more than 1,500 injuries and four deaths related to e-scooter accidents in the U.S. since late 2017, according to Consumer Reports. They include broken bones, fractures, blunt head trauma, even brain injuries.
- **The clutter caused by these discarded devices has fiscal consequences.** Businesses that use sidewalks for sales displays and al fresco dining complain that e-scooters not in use are causing sidewalk clutter that blocks pedestrian traffic, deters customers and affects their bottom line.
- **Local agreements are working – why disrupt it?** Several cities have negotiated agreements with industry representatives, residents and business owners to address local concerns. Some cities have incorporated them into a dockless bike share program, others have limited the number of units based on resident population, created scooter free zones or established a pilot program to learn more. These local solutions are unique to the desires and needs of each community.
- **Local regulations protect residents and tourists.** When a festival, parade, conference or other event comes to town, so do people. Areas that are normally e-scooter friendly might need to be temporarily restricted to protect pedestrians. Keeping regulations local gives cities the flexibility they need to respond to changing circumstances.

A micromobility device is a small vehicle used to travel short distances. This includes e-scooters. The ones in question are dockless rent-by-the-minute electric scooters that typically reach about 20 mph. Companies offer on-demand units using a GPS enabled pay-as-go app. (This is similar to how Uber and Lyft offer on demand ride sharing.) The availability of e-scooters and e-scooter share programs emerged in 2017 and have expanded rapidly across the United States. Cities are seeing influx of the devices dropped onto their streets, seemingly overnight, without local permission or a local contact to help manage the fleet. Further, despite safe riding standards established by e-scooter companies, public common use practices are resulting in an unprecedent amount of injuries.

If we allow e-scooter share programs to operate unchecked in our local communities, residents, visitors and businesses are put at unnecessary risk. Keep regulations local.

For more information, contact Jeff Branch at (850) 701-3655 or *jbranch@flcities.com*.

PROTECT AFFORDABLE HOUSING

Stop Raiding the Affordable Housing Trust Fund

The Florida League of Cities calls on the Florida Legislature to require all funds from the Sadowski State and Local Housing Trust Fund be used only for Florida's affordable housing programs.

KEY POINTS

- **We have a homeless problem. And it's at risk for getting worse.** Florida has the third highest homeless population of any state in the nation. In addition, more than 911,000 very low income Floridians pay over 50 percent of their income on housing, meaning they are one missed paycheck away from homelessness.
- **We have a robust solution but it's not being utilized as designed.** Year after year, the Florida Legislature has swept much of the Sadowski Fund's revenue into the general fund, limiting the effectiveness and reach of Florida's affordable housing programs.
- **Using these trust fund dollars for ONLY affordable housing will have positive economic impact.** For every $1 provided from the Sadowski Fund, there is a $4 economic impact generated in return from private sector loans and equity.
- **Using trust fund dollars for ONLY affordable housing has broad support.** There is vast support from all sectors to use these funds solely for housing projects, including AARP of Florida, the Florida Chamber of Commerce, the Florida Association of Counties, Habitat for Humanity of Florida and the Florida Home Builders Association.

In 1992, the Florida Legislature passed the William E. Sadowski Affordable Housing Act, which raised the state documentary stamp tax on deeds by 10 cents per $100 of the property's value. The Sadowski Act directed new funds to two trust funds, one for local governments and one for the state. As housing prices increase, so does the revenue from documentary stamps, which in turn makes more money available to help build affordable housing. In fiscal year 2019-2020, a projected $352 million in documentary stamp tax revenues will be available for appropriation to the Sadowski Trust Fund. If fully appropriated, the economic impact created the Sadowski State and Local Housing Trust Funds would produce 30,000 jobs in Florida, and it would have an economic impact of more than $4 billion on the state.

Florida has a solution to address the affordable housing crisis in the state. The Florida Legislature just needs to stop sweeping the funds.

For more information, contact Jeff Branch at 850-701-3655 or *jbranch@flcities.com*.

INVEST IN TRANSPORTATION INFRASTRUCTURE
Partner with Cities to Future-Proof Florida's Transportation Infrastructure

The Florida League of Cities calls on the Florida Legislature to create an equitable transportation funding formula for state, county and city governments.

KEY POINTS

- **Our transportation infrastructure is rapidly declining.** With 126 million visitors each year and more than 900 people moving to Florida each day, congestion and wear and tear on our roads is a continuous problem.
- **Outdated funding formulas are not keeping pace with demand.** The federal gas tax was last increased in 1997, the state gas tax in 1943, the county gas tax in 1941 and the municipal gas tax in 1971.
- **Advances in technology are further compounding the transportation funding crisis.** Cars are becoming more fuel efficient, thus the gas tax is generating less revenue *per car* on the road.
- **We need greater flexibility to meet the demands of the future.** Allowing municipalities the ability to index their local motor fuel tax rates is one way to provide greater flexibility to fund unique transportation needs.

Transportation infrastructure is paramount to the prosperity of all communities. While the federal, state and county governments have a variety of tools available to address transportation funding, municipalities have limited revenue options for funding transportation projects. For example, charter counties may hold a referendum on whether to impose up to a 1 percent sales tax to fund transportation infrastructure projects. Cities do not have this same power. Giving municipalities the same transportation revenue options would enable them to fund local solutions with local dollars.

Cities need greater flexibility to fund transportation projects. Give us the tools we need.

For more information, contact Jeff Branch at (850) 701-3655 or *jbranch@flcities.com*.

Community Redevelopment Agencies

Priority Statement:
The Florida League of Cities SUPPORTS legislation to protect and improve municipalities' use of community redevelopment agencies to effectively carry out redevelopment and community revitalization in accordance with Home Rule.

Background:
There are 222 active community redevelopment agencies (CRAs) in Florida. They were established to encourage new investment and job creation in urban areas that were blighted as a result of substantial growth moving away from the urban core.

For many years, residential development and commercial and governmental facilities were being built outside central urban areas. As these central urban areas became vacant or underutilized, high crime rates followed, creating a decline in the economic and social vitality of many municipalities. Faced with these challenges, municipalities, working with their respective counties, have exercised their discretion to establish a CRA as a means for economic recovery in these areas.

Under Florida law (Chapter 163, Part III), local governments are able to designate areas as CRAs when certain conditions exist. These conditions include: the presence of substandard or inadequate structures, a shortage of affordable housing, inadequate infrastructure, insufficient roadways and inadequate parking. To document that the required conditions exist, the local government must survey the proposed redevelopment area and prepare a "Finding of Necessity."

If the Finding of Necessity determines that the required conditions exist, the local government may create a CRA to provide the tax increment financing tools needed to foster and support redevelopment of the targeted area, and to spur job growth. This redevelopment tool is used by Florida counties and cities of all sizes, from Miami-Dade County, Tampa, Orlando and Jacksonville, to Hernando County, Madison and Apalachicola, to improve their targeted areas.

The tax increment used for financing projects is the difference between the amount of property tax revenue generated before the CRA designation and the amount of property tax revenue generated after the CRA designation. Monies used in financing CRA activities are, therefore, locally generated. CRA redevelopment plans must be consistent with local government comprehensive plans. This makes CRAs a specifically focused financing tool for redevelopment.

This financing system is successful because it provides specific public services without increasing or levying any new taxes. Both residents and business owners favor this system because the taxes they pay on their investment are rewarded with direct benefits from the CRA. Also, unlike a city or county government, a CRA may utilize tax increment financing as a way to leverage these local public funds with private dollars to make redevelopment happen in public/private partnerships.

Contact: David Cruz, Legislative Counsel – 850-701-3676 – dcruz@flcities.com

ADDITIONAL POINTS:

1. The state should be wary of attempts to restrict the use of tax increment financing, particularly if the debate is over money and control and not about the merits of revitalizing blighted areas. CRAs have demonstrated that the use of the funding dramatically improved the economic and social outcomes within the targeted areas. These outcomes benefit cities, counties and, more importantly, the taxpayers.

2. CRAs and tax increment financing have been integral tools for municipalities to provide improvements to run-down urban cores for more than 30 years. It is not in the state's best interest to restrict municipalities' ability to revitalize and redevelop areas that are struggling the most. This is especially true, given the sunset of the state funded Enterprise Zones program and the lack of alternative programs that address slum and blighted areas in Florida.

3. Redevelopment of an area can take different twists and turns to accommodate shifting circumstances, requiring the need for flexibility. Any attempt to increase bureaucratic or political interference would hinder the ability of the CRA to respond nimbly and comprehensively in implementing redevelopment initiatives.

4. On February 3, 2016, the Miami-Dade County Grand Jury filed a report titled "CRAs: The Good, the Bad and the Questionable" that asserts the highest priority of Florida's CRAs should be affordable housing. This view of CRAs incorrectly reduces and mislabels their value and core mission as versatile revitalization engines. The Grand Jury report asserts CRAs are not held accountable for their spending and, therefore, public tax dollars are being abused by city officials. This is incorrect. The use of TIF funds must be consistent with the redevelopment plans agreed to by the citizens in a community.

5. Overall, the comprehensive community redevelopment plans that are created and implemented by CRAs are uniquely designed to address that area's specific needs for revitalization. Creating affordable housing is just one of the many roles that CRAs may play, and it should be part of a balanced economic development strategy. There are a variety of community, state and federal programs with the primary mission of providing affordable housing and CRAs consistently partner with and invest in these programs. The Florida Redevelopment Act, which governs CRAs, is designed to be adaptable to Florida's widely diverse communities.

6. Local governments create CRAs to respond to local needs and concerns to address slum and blight. CRA boards act officially as a body distinct and separate from the governing body of a city or county, even when it is the same group of people. By allowing elected officials to serve as CRA board members, CRAs provide knowledgeable representation to taxpayers from individuals who are familiar with community needs. Ultimately, elected city officials
are held accountable by their decisions.

7. At times, some county governments have been critical or uncooperative in the creation and expansion of CRAs by municipalities. These intergovernmental disputes have led to unnecessary conflicts between local governments. In some instances, questions regarding

Contact: David Cruz, Legislative Counsel – 850-701-3676 – dcruz@flcities.com

the interpretation of certain provisions of the Community Redevelopment Act are being disputed.

Status:
HB 9 (LaMarca) and **SB 1054** (Lee) seek to dramatically limit the efficacy of CRAs in addressing slum and blight while attempting to increase the accountability and transparency of CRAs. Of specific concern to cities, HB 9 requires any new CRA created after October 1, 2019, be created by a county-wide referendum held during a primary election or general election. Current law allows a CRA be created by the vote of a city or county commission. In addition, HB 9 provides for the eventual phasing out of all existing CRAs by 2039, unless reauthorized by a two-thirds vote of the body that created the CRA. SB 1054 also provides for the eventual phasing out of all existing CRAs by 2039, unless reauthorized by a by majority vote, rather than a two-thirds vote of the body that created the CRA. SB 1054 caps administrative CRA spending at 18 percent. SB 1054 does not require a county-wide referendum to create a new CRA. However, SB 1054 prohibits the use of tax increment expenditures on festivals, street parties, grants to promote tourism or grants to socially beneficial programs. HB 9 has passed out of all three committees of reference and is now poised to be considered by the full House. SB 1054 has been referred to Community Affairs, the Appropriations Subcommittee on Transportation, Tourism and Economic Development, and the Appropriations Committee.

Revised: 3/21/2019

Contact: David Cruz, Legislative Counsel – 850-701-3676 – dcruz@flcities.com

Short-Term Rentals

Statement:
The Florida League of Cities SUPPORTS legislation that restores local zoning authority with respect to short-term rental properties, thereby preserving the integrity of Florida's residential neighborhoods and communities. The Florida League of Cities OPPOSES legislation that preempts municipal authority as it relates to the regulation of short-term rental properties.

Background:
In 2011, the Florida Legislature prohibited cities from regulating short-term vacation rentals. A short-term vacation rental is defined as a property that is rented more than three times a year for less than 30 days at a time. The legislation passed in 2011 included a provision that "grandfathered" any ordinance regulating short-term rentals prior to June 1, 2011. Since that time, a number of cities, both "grandfathered" cities and those that did not have an ordinance in place, have experienced problems with these properties. The effect of the 2011 law is that two separate classes of cities were created respective to short-term rentals, those with Home Rule authority and those without.

In 2014, the Legislature passed SB 356 (Thrasher), which diminished the preemption on short-term rentals. The 2014 law allows local governments to adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues created by their proliferation in residential neighborhoods. Unfortunately, SB 356 left in place existing statutory language stating that cities cannot "prohibit" short-term rentals or regulate the duration or frequency of the rental.

Those cities fortunate enough to have had an ordinance in place prior to the 2011 preemption are still allowed to regulate short-term rentals, but the question remains whether these ordinances will continue to be valid if amended. Some city attorneys believe these ordinances are "frozen" and any future amendments would cause a loss of the "grandfather." The problem with this is twofold. First, with the rise of popular rental websites like Vacation Rental by Owner (VRBO) and AirBnB making it easier to advertise and rent these properties, the number of properties used as short-term rentals in Florida has exponentially increased in the last four years. Second, as a result of this enormous growth in the rental market, the scope of the problem has changed and ordinances adopted before 2011 may no longer be effective.

It is important to note that many of Florida's larger cities (with a larger professional staff) fell into the grandfathered category. They have retained the ability to regulate these properties through zoning and may have duration and frequency requirements. Some of these cities may want to amend their ordinances to adjust to a changing problem. They are reluctant to do so out of fear of losing their existing ordinance and with it their Home Rule authority relating to short-term rentals. Recognizing that the ordinances on the books are no longer effective, cities want the ability to come up with solutions that work for their respective community, but because of the potential loss of the "grandfather," they are unable to do so. It is important to note that any potential amendments to existing ordinances would be vetted through numerous public hearings that allow neighboring

Contact: Casey Cook, Senior Legislative Advocate – 850-701-3609 – ccook@flcities.com

homeowners, short-term rental owners, property managers and local businesses to weigh in on proposed legislation.

Cities without short-term rental regulations in place prior to June 1, 2011, have had their zoning authority stripped and are now seeing these rentals completely overtaking residential neighborhoods. Long-time residents are moving out as a result, and the residential character of traditional neighborhoods is slowly being destroyed.

The impacts of problematic short-term rentals on neighboring residents are felt in a number of ways:

The Hotel Next Door – Commercial Activity in Residential Neighborhoods

Houses that sleep 26 people are now present in what were once traditional neighborhoods. Because of the inability to regulate the duration of a renter's stay, these houses could experience weekly, daily or even hourly turnover. Obviously, the constant turnover of renters creates a number of issues for cities and neighboring property owners. Prior to the preemption, local governments were able to regulate this activity through zoning. Short-term rentals have become increasingly popular in the last five years. Because a city cannot "prohibit" these properties, they are powerless to exclude them from residential neighborhoods. As a result, investors, many of whom are located out of state or even in a different country, have purchased or built single-family homes with the sole intent of turning them into short-term rentals.

Cities use zoning as a tool to prepare for their future growth and also use it to control where commercial and residential properties are located. Hotels have different infrastructure needs than single-family residential properties. As residential neighborhoods are developed, the infrastructure installed is designed for the future use of the properties. Many neighborhoods have infrastructure in place with capacity for up to eight people per house. Now there are houses in these very same neighborhoods that sleep more people than the number originally planned for, placing a significant strain on existing infrastructure. Commercial properties like bars, hotels and restaurants typically need more parking than a single-family property, as well as have different operating hours and experience greater noise levels. The current law removes important land use and zoning tools that will impact how a city plans for future growth and levels of service.

Noise Complaints

In areas where short-term rentals are situated, many neighboring residents complain of the noise generated by the vacationing renters next door. When people go on vacation, often their behavior changes. They may stay awake later, consume more alcoholic beverages throughout the day, or participate in recreational activities that they would not participate in while at their own homes, such as swimming at midnight with music blaring. For those homes located near water, a lake or the ocean, it is important to note that sound travels easily over water – and residents located hundreds of yards away may be the ones calling and complaining to the police and their local elected officials.

Some cities have noise ordinances, but these have proved problematic to enforce. One such example is Lighthouse Point. Its ordinance requires sustained noise over a certain decibel threshold for 10 minutes. Many times after the police arrive at a residence, the noise dies down. These renters may leave the next day with new ones replacing them. The new renters are often unaware of the noise ordinance or past complaints and may cause the same problems. The out-of-state property owner may not even be aware of the problems created by their renters and with the constant turnover. The

problem ends as one renter leaves and begins again as new renters arrive. This causes a significant drain on law enforcement resources. When law enforcement officers are called to respond to noise complaints, one less officer is on the street either preventing or solving crimes.

Parking

Many short-term rentals are located in single-family neighborhoods. In most cases, the driveway was built to accommodate two or three vehicles. When you now have a renovated house that acts as a small hotel, there will be more than three cars needed to get these renters to the property. This leads to cars that are parked on the street, making it difficult for emergency vehicles to respond to emergencies and causes increased response times in these neighborhoods. Cities have begun to adopt ordinances creating parking standards for short-term rental properties. Unfortunately, these ordinances only solve the parking issue but fail to address any of the other issues created by this commercial activity in residential areas.

Revenue Issues

As stated earlier, a property rented more than three times a year for less than 30 days at a time meets the vacation rental definition and should be licensed by the state. The Department of Business and Professional Regulation (DBPR) is tasked with investigating unlicensed vacation rentals but lacks the resources needed to fully investigate every complaint. Unlicensed vacation rentals could be costing Florida millions of dollars each year from lost licensing revenue.

Licensed short-term vacation rentals and hotels are also required to charge a sales tax to renters and then remit this back to the state. Many licensed and unlicensed vacation rentals are not doing this. The Florida Department of Revenue (DOR) has limited resources and cannot adequately monitor these transactions, costing the state millions of dollars in lost revenue. Similarly, short-term rental owners in some counties are required to collect and remit the tourist development tax to the state. DOR is often unable to track down the vacation rental owners who are not paying the tourist development tax.

The Legislature began the conversation on short-term rentals in 2014, and the Florida League of Cities supported both HB 307 (Hutson) and SB 356 (Thrasher). The bills were a step in the right direction, but they only partially restored Home Rule to Florida's cities. Cities are still prevented from regulating the duration and frequency of the rentals, and local zoning does not apply to these properties. Without the ability to regulate these key areas, local governments will not be able to adequately address the problems associated with these properties.

Status:

There have been several short-term rental bills filed for the 2019 legislative session.

SB 824 (Diaz) and HB 987 (J. Grant) – Oppose

- Preempt to the state the regulation of vacation rentals
- Any ordinances (noise, parking, trash, etc.), must apply to all residential properties, regardless of how the property is being used
- Local governments cannot prohibit rentals (not just STRs), impose occupancy limits on rental properties, or require inspections or licensing of rentals (specific to STRs)
- Create a process where city must prove by clear and convincing evidence that their ordinance or regulation complies with this section

Contact: Casey Cook, Senior Legislative Advocate – 850-701-3609 – ccook@flcities.com

- **Remove the grandfather clause; also potentially jeopardizes HOA restrictions**
- Require applicants for STR license to provide name, address, phone number, and email to Department of Business and Professional Regulation (DBPR) who must make this available to the public on the division's website.

SB 812 (Simmons) and SB 814 (Simmons) – Support

- Requires short-term rental (STR) registration to be displayed in the establishment and the registration number to be included in any listing or advertisement
- Defines "commercial vacation rental": five or more units under common ownership
- Defines "hosting platform"
- Clarifies that rental units, in whole or in part, and advertised for rental periods for less than 30 days, are classified as STRs
- Requires the Department of Business and Professional Regulation (DBPR) to inspect commercial vacation rentals at least biannually
- Requires that non-commercial STRs must be made available for inspection upon request
- Requires that local governments treat all residential properties the same, regardless of use…but there's an exception…In single family residences where the owner is not occupying a portion of the property where the rental activity is taking place (home sharing), local governments can adopt specific regulations to the rental
- Requires that STR owners give the city a copy of their state license and the owner's emergency contact information. Cities can't charge for this information.
- Says that grandfathered cities can amend their ordinances if it's the changes are "less restrictive"
- Says that DBPR can refuse to issue or renew, or suspend or revoke, the license of any public lodging establishment that is the subject of a final order from a local government directing the establishment to cease operations due to a violation of a local ordinance
- Requires any advertisements to list the license number, and the ad must also include the physical address of the property
- Adds several new requirements on hosting platforms including a prohibition on facilitating a rental if the property has not been licensed by DBPR
- Requires the hosting platform to maintain rental records of every property advertised on the platform and requires DBPR to audit at least annually, with penalties for noncompliance or failed audits.

SB 1196 (Mayfield) – Support

- Defines "hosting platform," and provides for more accountability of the platforms
- Requires Department of Business and Professional Regulation (DBPR) to collect information relating to the bookings of each short-term rental and share this information with cities upon request
- Expands definition of transient public lodging establishment to include "group of units in a dwelling"
- Requires a license to be displayed inside the STR and the license number to be included in all advertising
- Prohibits platform from facilitating a booking transaction unless the operator has consented to the disclosure of the required information

Contact: Casey Cook, Senior Legislative Advocate – 850-701-3609 – ccook@flcities.com

- Requires hosting platform to remove noncompliant ads within three business days of DBPR's notification
- Requires DBPR to revoke, refuse to issue, or renew a short-term rental license when the subject property violates the terms of an applicable lease or property restriction OR the agency determines that the operation of a short-term rental violates a local law, ordinance or regulation.

SB 1720 (Lee) and **HB 1383** (Grant) would significantly amend the Bert J. Harris Act. These bills could have a serious impact on local government operations and expose cities and counties to substantial liability, especially for those who receive a flurry of Harris Act claims relating to vacation rental ordinances. For more information on this set of bills see FLC's Issue Brief on Private Property Rights "Bert Harris Act".

Revised: 3/21/2019

Contact: Casey Cook, Senior Legislative Advocate – 850-701-3609 – ccook@flcities.com

Telecommunications Services and Communications Services Tax

Statement:
The Florida League of Cities SUPPORTS legislation to reform the Communications Services Tax in a manner that is revenue neutral; provides for a broad and equitable tax base; provides for enhanced stability and reliability as an important revenue source for local government; and provides a uniform method for taxing communication services in Florida. Reform should promote a competitively neutral tax policy that will free consumers to choose a provider based on tax-neutral considerations. The Florida League of Cities OPPOSES additional efforts to strip cities of the ability to regulate and charge market determined fees regarding the placement of communications equipment on city property and in public rights-of-way.

Background:
Communication Services Tax
In 2000, the Florida Legislature restructured taxes and fees on telecommunications, cable, direct-to-home satellite and related services under the Communication Services Simplification Act. The act replaced and consolidated seven different state and local taxes and fees into a single tax that has two centrally administered parts, the state and the local communications services tax (CST). The intent of this legislation was to provide a fair, efficient and uniform method for taxing communications services sold in Florida, including a competitively neutral tax policy for consumers. The local CST is one of the main sources of locally levied general revenue for municipalities, providing them with almost $400 million annually. Counties collect more than $200 million a year. The State of Florida collects approximately $687 million, including direct-to-home satellite. The state shares a portion of direct-to-home satellite revenues with cities through the Municipal Revenue Sharing Program and Local Half-Cent Sales Tax Program. These revenues may be used for any public purpose, including pledging the revenues to secure bonds.

Small Wireless Deployment (5G)
In 2017, the Legislature passed CS/CS/HB 687 (La Rosa) preempting local government control of taxpayer-owned rights-of-way for placement of small or micro wireless antennas and equipment. Among other various provisions, the law bars local governments from prohibiting or regulating the placement of small or micro wireless facilities on or next to existing cellphone towers and utility poles within public rights-of-way. The law requires a local government to approve or deny an application for a permit to collocate small wireless facilities within 60 days of receipt of the application. An additional 30 days is provided to the local government after the date of the permit request to negotiate an alternative location for the equipment facilities. If the application is not processed within that time frame, it is deemed approved. Local governments are also prohibited from imposing minimum distances between small wireless equipment. The Florida Department of Transportation, deed-restricted retirement communities that have more than 5,000 residents and have underground utilities for electric transmission or distribution, and municipalities that are located on a coastal barrier island that has a land area of less than five square miles and fewer than 10,000 residents are exempted from all provisions of the law. In addition, the bill sets an arbitrary price cap of $150 per attachment per year. The law allows

Contact: Amber Hughes, Sr. Legislative Advocate – 850-701-3621 – AHughes@flcities.com

for some minimum design standards and for the wireless communications provider and the local government to negotiate those design standards at the local level.

Status:

CS/SB 1000 (Hutson) and **CS/HB 693** (Fischer) reduce the state communications services and direct-to-home satellite services tax rate by 1 percent. The fiscal impact of the communications services tax rate reduction on municipalities and counties is estimated to be approximately $21 million per year. The bills were substantially amended to include changes to the law on the use of public rights-of-way, including provisions on small wireless infrastructure. Current law contains a statement of legislative intent that local governments treat providers of communications services in a nondiscriminatory and competitively neutral manner. The bills require local governments to take into account many factors, such as distinct engineering or construction and operation, when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way, thereby asking for special treatment. The bills also remove many of the provisions that were agreed upon by the wireless industry when the law passed in 2017. For example, the bills remove the requirement that wireless providers must comply with local government nondiscriminatory utility undergrounding requirements.

Installing a new utility pole in the rights-of-way to support a small wireless facility is addressed in current law, in part for spacing, height and permit application review timeframes, but a local government can still subject the utility pole to local government "rules and regulations governing the placement of utility poles in the rights of way." The bills remove this language, meaning that a city or county must treat a permit application to put a new utility pole in the right of way exactly the same as a permit application to collocate a small wireless facility onto an existing utility pole. The bills prohibit a local government from requiring wireless providers to submit certain information, such as an inventory of communications facilities, maps, locations of such facilities or other information, as a condition of registration, renewal or for any purpose. The bills do allow a local government to require, as part of a permit application, that the applicant identify ground-level communications facilities within 25 feet of the proposed installation location for the placement of grade communications facilities. The bills also prohibit requiring a wireless provider to pay any fee, cost or other charge for registration or renewal; adoption or enforcement of any ordinances, regulations or requirements as to the placement or operation of communications facilities in a right-of-way by a communications services provider; or imposition or collection of any tax or charge for providing communications services over the communications services provider's communications facilities in a right-of-way. The bills delete performance bonds and security funds from the allowable requirements for a communications provider and allow requiring a construction bond limited to no more than one year after the construction is completed. The bills create a cause of action for any person aggrieved by a violation of the right-of-way statute. A party may bring a civil action in a U.S. district court or any other court of competent jurisdiction, and the court may grant temporary or permanent injunctions to prevent or restrain violations and direct the recovery of full costs, including awarding reasonable attorney fees. CS/SB 1000 allows awarding attorney fees only to an aggrieved party who prevails, while CS/HB 693 allows awarding of attorney fees to the prevailing party.

Revised: 3/22/2019

Contact: Amber Hughes, Senior Legislative Advocate– 850-701-3621 – AHughes@flcities.com

Private Property Rights
"Bert Harris Act"

Statement:
The Florida League of Cities opposes substantive changes to the Bert J. Harris Property Rights Protection Act that shift inordinate financial burdens onto local governments.

Background:
The Bert J. Harris Act provides a civil cause of action for private property owners whose current use or vested right in a specific use of real property is "inordinately burdened" by the actions of a governmental entity.

The Harris Act authorizes relief, including compensation, to the private property owner for the actual loss to the fair market value of the real property. The burden of proof is on the property owner to show that a governmental entity has inordinately burdened his or her real property. Any Bert Harris claim must be brought within one year of governmental action. The Harris Act defines an inordinate burden as one in which an action of one or more governmental entities has restricted or limited the use of property such that the owner is unable to attain reasonable, investment-backed expectations for the existing use or a vested right in the existing use of the property as a whole, or if the owner is left with uses are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good, which should be borne by the public at large.

Status:
A pair of bills that significantly amend the Bert J. Harris Act have been filed for the 2019 session. **SB 1720** (Lee) and **HB 1383** (Grant) could have a serious impact on local government operations and expose cities and counties to substantial liability. When faced with a Harris Act claim, cities and counties often choose to settle the claim by offering the aggrieved property owner a variance to the rule or regulation that is inordinately burdening the property. Settling claims in this method saves taxpayers the expense of paying monetary damages and is encouraged in the Harris Act.

Of immediate concern, the bills require that when a government entity reaches a settlement on a Harris Act claim regarding a residential property, if the settlement creates a variance, such variance is to be automatically applied by the government entity to all "similarly situated properties" that are subject to the same government rules or regulations. The bills do not define what a "similarly situated property" is. Therefore, in its broadest sense, the term may include properties outside of the same zoning district, and it has no regard for the size or density of the residential property, any historical designations or other zoning overlays differing residential properties may have.

For those cities and counties that have received a flurry of Harris Act claims related to vacation rental ordinances, these bills can be especially troublesome. In practice, the bill would work as follows: A city enacts a vacation rental ordinance that limits occupancy to four occupants per

Contact: David Cruz, Legislative Counsel – 850-701-3676 – dcruz@flcities.com

bedroom. A property owner who falls under the regulation brings a Harris Act claim because he or she is at a financial loss because property has been used to allow six occupants per bedroom. In this example, the city can choose to pay monetary damages or settle by allowing a variance for this specific property to, for example, have five occupants per bedroom. The legislation would require this settlement by variance to automatically apply to all residential property in the city and, therefore, effectively void the vacation rental ordinance from further enforcement.

The legislation fails to consider that there are legal due process procedures in place to protect the property rights of property owners who may be harmed by the issuance of a variance. Variances require applications and public notices, including posted public notice and mailed notices to property owners within a certain radius of the property for which a variance is being sought. They also require quasi-judicial hearings. A local government cannot provide Bert Harris relief to a property owner by abridging the rights of other potentially impacted property owners.

The bills reduce the time frame for government entities to respond to Harris claims from 150 days to 90 days which is inadequate for small staffed local governments to appropriately respond to claims.

The bills seek to remove the current attorney fee provisions for the Harris Act that give judges discretion in deciding if they will award attorney fees and allow judges to consider numerous factors in awarding attorney fees including settlement offers. If these provisions are removed, the attorney fees will be paid to the property owner if they prevail even if the government entity makes a good faith effort to settle the claim.

SB 1720 is the Senate Judiciary Committee. HB 1383 is the House Civil Justice Committee.

Revised: 3/21/2019

Contact: David Cruz, Legislative Counsel – 850-701-3676 – dcruz@flcities.com

2019 Legislative Issue Briefs

Micromobilty Devices (Scooters)

Priority Statement:
The Florida League of Cities OPPOSES legislation that limits the ability of cities to protect public safety through the local regulation of micromobility devices.

Background:
Scooter share systems emerged in 2017 as a new shared micromobility device service. This service, which is similar to bike and car shares, has expanded rapidly across the United States.

Shared programs allow users to rent and ride bicycles and small electric-powered scooters on a short-term basis for a fee, within designated geographical areas. Local governments in Florida and across the country have entered into public-private partnerships with bicycle and motorized scooter share companies to facilitate share programs within their jurisdictions.

Several major cities in Florida including Coral Gables, Tampa, and Fort Lauderdale have started testing electric scooter programs. Some cities are adopting three-, six- or 12-month pilot programs to give city staff time to learn about services, providers, operations and their impacts. A pilot project gives a city experience with the program before deciding if they want it to operate for a longer period through a permanent permit or licensing structure adopted by municipal ordinance.

In Santa Monica, Calif., Bird Rides Inc., borrowing tactics from ride hailing companies, deployed e-scooters without the city's permission. Santa Monica's experience set the stage for a series of unpermitted entrances in the U.S. by scooter start-up companies. Throughout the spring and summer of 2018, e-scooters appeared in more than 43 U.S. cities, in many cases without permission from local officials or warning from the companies that operate the scooters. Against a national backdrop of unforeseen and unpermitted launches, several cities responded with cease and desist orders, fines or both.

Under Florida law, motorized scooters are not legal to operate on public roads because they cannot be licensed and registered as motor vehicles.

Proponents of e-scooters argue that scooters:

- Offer affordable transit.
- Help solve the issue of first/last mile.
- Save a city money and make transportation more equitable by servicing transit deserts.
- Provide cities with rider data to help city planners implement new micro-ability infrastructure.

Contact: Jeff Branch, Legislative Advocate – 850-701-3655 – jbranch@flcities.com

Opponents of e-scooters argue that scooters:

- Block public ways and cause ADA issues.
- Are being tossed onto trees and dumped in rivers and the ocean.
- Causes injuries to pedestrians on sidewalks.
- Are not being properly maintained.

Although there are safe riding regulations established by electric scooter companies and local governments, public common use practices and the types of inquires associated with these new micromobility devices are unknown, thus prompting the Centers for Disease Control and Prevention to launch an investigation.

In 2018, some members of Florida Legislature attempted to preempt municipalities regulation of dock and dockless bicycles. The Florida League of Cities formed a coalition that was able to help defeat this measure.

Status:
SB 542 (Brandes) and **HB 453** (Toledo) prohibit local governments from taking any action or adopting any law that is designed to limit or prevent any company engaged in the rental of micromobility devices from operating in its jurisdiction, as long as the company complies with the regulations governing similarly situated businesses. The bills also define the term "micro-mobility device" as a motorized transportation device made available for private use by reservation through an online platform. The Florida League of Cities opposes these bills.

Revised: 3/21/2019

Contact: Jeff Branch, Legislative Advocate – 850-701-3655 – jbranch@flcities.com

Transportation Funding

Priority Statement:
The Florida League of Cities SUPPORTS legislation that preserves local control of transportation planning. The legislation should create an equitable transportation funding formula among the state, municipalities and counties, while providing for additional transportation revenue to support innovative infrastructure and transit projects to meet the surging transportation demands driven by dramatic growth throughout Florida.

Background:
Transportation infrastructure is paramount to the prosperity of all cities. It greatly affects quality of life by influencing peoples' decisions about where to live, work and spend their free time. In many Florida cities, roads have reached capacity and cannot be widened anymore. As the number of cars on Florida's roads increases, there needs to be a greater focus on alternative transportation.

With over 126 million visitors each year and more than 900 people moving to Florida each day, the state's transportation infrastructure is rapidly declining. Congestion is a growing problem, and the added wear and tear on our roads means more frequent and more costly repair or replacement. At the same time, highway construction costs continue to escalate. Some of this increase is directly attributable to technological advancements that are necessary to implement a "smart transportation infrastructure" where train stations, bus stops, airports, and car- and bike-sharing stations become integrated parts of one big open high-speed connected communications network.

To compound the problem, the federal gas tax was last increased in 1997, the state gas tax in 1943, the county gas tax in 1941 and the municipal gas tax in 1971. The Fuel Sales Tax and the State Comprehensive Enhanced Transportation System Tax, which are the State of Florida's portion of the motor fuel tax rates, are adjusted once a year to account for inflation. A major portion of transportation funding flows to municipalities through county, state and federal taxes on gasoline. Allowing municipalities the ability to index their local motor fuel tax rates is one way to provide greater flexibility to fund their unique transportation needs.

While the federal, state and county governments have a variety of tools available to address transportation funding, municipalities have limited revenue options for funding transportation projects. For example, charter counties may currently hold a referendum on whether to impose up to a 1 percent sales tax to fund transportation infrastructure projects. Recently, voters in Hillsborough County passed such a tax that will be in effect for 30 years and raise about $9 billon over that time period. Giving municipalities the same transportation revenue options would create a new funding mechanism.

Transportation projects are often the catalyst for economic development and the result of growth within a community. As municipalities lack options to increase revenue and continue to struggle to fund local transportation projects, increased and alternative funding sources at the state level are a necessity.

Contact: Jeff Branch, Legislative Advocate – 850-701-3655 – jbranch@flcities.com

Status:

- Governor Ron DeSantis proposed $10 billion for the transportation work program which includes highway construction and expansion, seaport and airport improvements, bridge maintenance and transit programs.

- **CS/SB 7068** (Infrastructure & Security) creates the Multi-use Corridors of Regional Economic Significance (M-CORES) Program within the Florida Department of Transportation. The program is designed to advance construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure. The proposed bill identifies the following three corridors comprising of the M-CORES Program: Southwest-Central Florida Connector, Suncoast Connector and Northern Turnpike Connector. The bill also provides increased funding for the Small County Road Assistance Program, the Small County Outreach Program and the Transportation Disadvantaged Trust Fund.

- **SB 1368** (Simpson) creates an electric and hybrid fleet vehicle rebate program within the Department of Agriculture and Consumer Services. The purpose of the program is to help reduce transportation cost and to encourage freight mobility investments. Forty percent of the annual allocation must be reserved for governmental applicants.

- **SB 660** (Brandes) is the comprehensive Department of Transportation package. Of specific interest to cities, SB 660 requires the Florida Transportation Commission to prepare a report for the governor and the Legislature listing all sources of revenue for transportation infrastructure and maintenance projects regarding the impact of electric vehicles and hybrid vehicles on such revenue sources.

Transportation Proposed Budget Highlights	Proposed House Budget FY 19	Proposed Senate Budget FY 19	General 2018 Appropriations
Transportation Work Program	$9.7 billion	$9.7 billion	$9.9 billion
SHIP Housing Program	$49.4 million	$170 million	$44.4 million
SAIL Housing Program	$74.1 million	$53.7 million	$30 million
Small County Resurface Assist Program	$29.8 million	$29.8 million	$29.8 million
Small County Outreach Program	$72 million	$72 million	$72 million

Revised: 3/21/2019

Contact: Jeff Branch, Legislative Advocate – 850-701-3655 – jbranch@flcities.com

Water Supply & Water Quality

Statement:
The Florida League of Cities SUPPORTS legislation to address the state's critical water resource and water quality deficiencies to mitigate the negative economic impact of these deficiencies through priority corrective actions and funding. The legislation should include:

- establishment of a dedicated and recurring source of state funding to meet current and projected local government water supply and water infrastructure needs;
- annual assessment by the State of the state, regional and local water resource and water quality infrastructure improvement needs; and
- development of regional plans to prioritize actions and schedules for addressing integrated water quality and water supply needs based on objective criteria.

Background:
Florida's ability to meet the water needs of its growing population, industries and natural environment exceeds available supply and infrastructure. It is estimated that $48.71 billion will be needed over the next 20 years to meet needs for drinking water and wastewater, flood control, nutrient pollution, Everglades restoration, and beach and inlet erosion. Florida does not have a dedicated long-term, recurring source of funding for water supply, water quality and associated infrastructure.

In 2005 the legislature created the Water Protection and Sustainability Program, providing $100 million in recurring revenues for water projects, with local funding match requirements and transparent grant criteria. Funding was reduced and ultimately eliminated as the state slipped into the Great Recession. 2016 legislation required septic tank remediation plans for certain spring sheds and provided dedicated percentages of Amendment 1 money for the benefit of the Everglades and surrounding estuaries, Lake Apopka and springs. 2017 legislation offered a $1.5 billion plan for water storage needed to combat nutrient pollution in estuaries around Lake Okeechobee. These remedies will help address acute, regional issues, but statewide water supply and water quality deficits persist and continue to grow and threaten Florida's economy and environment.

The development of a successful and ensuring statewide water funding program will be a multi-year process. It is critical for the state to first obtain an accurate assessment of current and future water infrastructure needs to help quantify the extent of the need. Since 2016, the state Office of Economic and Demographic Research (EDR) has conducted an annual assessment of Florida water resources to help assess what is needed to meet demand and the requirements of law, how much is being expended to meet those needs, and what may be needed to meet those needs in the future. This report will continue to be refined over time. More immediate information is needed in the short-term, however, to better inform legislators about prioritizing and maximizing efficient use of state funds and lay the groundwork for development of a long-term statewide water funding program.

Contact: Rebecca O'Hara, Deputy General Counsel – 850-701-3692 – rohara@flcities.com

Legislation is needed to identify potential funding sources for a long-term, dedicated and recurring source of state funding. In addition, legislation is needed to authorize the Department of Environmental Protection to quantify water supply, water quality, flood control and environmental (habitat) restoration infrastructure needs over a 20-year planning timeframe. This will aid legislators in making budgeting and policy decisions about funding priorities, sources and criteria in the intermediate timeframe and help our state address the most critical needs in a timely manner.

Status:
SB 628 (Albritton) and **HB 1199** (Jacobs) would revise current law requirements for the state Office of Economic and Demographic Research's (EDR) annual assessment of Florida water resources. The bills would require the EDR to consult with the Department of Environmental Protection in developing the annual assessment and clarify the factors and criteria that EDR is required for the assessment. The bills would also require EDR to identify a comprehensive list of funding options necessary to fulfill any funding gaps identified in the needs assessment, taking into consideration existing revenue sources, potential additional revenue sources, and funding mechanisms used by other states for water infrastructure and environmental restoration. SB 628 has been referred to the Environment and Natural Resources Committee, the Infrastructure and Security Committee, and the Appropriations Committee. HB 1199 has not yet been referred to any committees.

Revised: 3/21/2019

Contact: Rebecca O'Hara, Deputy General Counsel – 850-701-3692 – rohara@flcities.com

Attorney Fees and Costs

Statement:
The Florida League of Cities OPPOSES legislation providing for the mandatory award of attorney fees and costs against local governments in civil actions.

Background:
The general rule in the United States is each party to a lawsuit pays his or her own attorney fees and costs no matter who wins. There are two exceptions to this rule that may allow a prevailing party to be awarded fees and costs. First, some contracts may contain a prevailing party attorney fee provision. Second, a statutory exception to this general rule may be enacted as a sanction or punitive measure intended to curtail certain conduct or practices.

Preemption occurs when the constitution or the Legislature by statute removes a topic or field from the scope of local governments' broad Home Rule powers. There are two types of preemption: express and implied. Express preemption requires a specific statement by the Legislature of its intent to preempt. The area of firearms and ammunition regulation is an oft-cited example of express preemption. Section 790.33(1), Florida Statutes, states: "the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition … ." Implied preemption occurs when a court creates a preemption in the absence of an express legislative statement. Courts will imply a preemption when the legislative scheme is so pervasive as to evidence an intent to preempt the particular field of regulation or when strong public policy reasons exist for the preemption.

CS/SB 1140 (Hutson) and **CS/HB 829** (Sabatini) create a new section of law providing for a mandatory award of attorney fees, costs and damages, including prejudgment interest and costs, against a local government in a civil action in which a local government ordinance is determined to have been preempted by the state Constitution or by state law. As filed, the bills apply to legal challenges involving both express and implied preemptions. The bills provide that fees and costs may not be awarded if the local government withdraws or repeals the ordinance within 21 days after receiving a written claim that the ordinance is preempted or receives a motion seeking fees and costs pursuant to the newly created section of law. The bills specify they are remedial in nature and intended to apply retroactively to all cases pending or commenced on or after July 1, 2019. According to bill sponsors, the purpose of the bills is to deter rogue local governments who intentionally enforce or adopt ordinances regarding a particular subject when the Legislature has clearly preempted the subject matter.

Status:
CS/SB 1140 was amended to provide that attorney fees and costs would be awarded to either prevailing party in such actions and to limit the applicability of the fee award to actions based on express preemptions (rather than implied preemptions).

Revised: 3/22/19

Contact: Rebecca O'Hara, Deputy General Counsel – 850-701-3692 – rohara@flcities.com