



Memorandum

IMMEDIATE ACTION REQUIRED

TO: Municipal Managers and Attorneys

FROM: David Cruz, Assistant General Counsel
Rebecca O'Hara, Assistant General Counsel

SUBJ: 2017 Legislation on Construction Preemptions

DATE: June 28, 2017

Despite a veto request submitted by the Florida League of Cities, on June 23, 2017 the Governor signed Enrolled **CS/CS/HB 1021** relating to construction, Chapter 2017-149 Laws of Florida. The bill's effective date is July 1, 2017. To facilitate compliance with the various provisions of the new law, we bring this memorandum to your immediate attention.

The bill revises various provisions of law concerning the Florida Building Code, contracting and construction. The bill includes six different preemptions of municipal home rule authority.

- Section 3 preempts municipal regulation of specified development, construction or improvements on property associated with a franchise or the sale of liquid fuel.
- Section 3 preempts municipal regulation of signage relating to the retail price of gasoline.
- Section 7 preempts municipal authority regarding plans review and building inspection and mandates municipalities to calculate cost savings and reduce fees when a permittee uses a private provider for plan review and inspection.
- Section 14 preempts municipal authority to require a fee or payment when one-family or two-family dwellings choose to install a separate water connection for a fire sprinkler system.
- Section 14 preempts municipal authority to impose appropriate water and sewer rates when a one-family or two-family dwelling unit chooses to install a larger water meter to accommodate a fire sprinkler system.
- Section 15 preempts municipal authority to require permits for painting residential structures.

With approximately 9,000 gasoline stations in Florida, municipalities should take note of language in Section 3 of CS/CS/HB 1021 preempting local government regulation relating to the design, construction or location of signage advertising the retail price of gasoline

that would prevent the signage from being "clearly visible" and "legible" from a roadway abutting the gas station premises.

Section 3 of CS/CS/HB 1021 also creates subsection 553.79(20), Florida Statutes, which restricts municipal regulation of signage and other uses of real property associated with the business activity of a "franchise" as defined in federal law, or used for the sale of liquid fuel. The language prohibits municipalities from imposing requirements on the siting, construction, design and location of buildings and improvements on real property used for carrying out the business activities of a franchise or used for the sale of liquid fuel. Specifically, the bill prohibits any requirement, including the requirement to obtain a development order, that "conflicts with" or "impairs" corporate trademarks, image standards, or other features of corporate branding identity. The terms "conflicts with" or "impairs" are not defined in the legislation.

A more detailed review of the Act follows; however, as you begin to work on regulations to implement this new law, please rely solely on the language in the Enrolled Bill or the Chapter Law. If you have any questions, please feel free to contact Rebecca O'Hara or David Cruz at (850) 222-9684.

Construction/Preemptions
Enrolled CS/CS/HB 1021
Chapter 2017-149 Laws of Florida

The bill broadly relates to various construction activities and includes numerous preemptions of local government authority.

- The bill amends section 489.103, Florida Statutes, relating to exemptions under construction contracting, to provide public utilities, including municipal gas utilities, are exempted from the provisions relating to construction contracting.
- Section 3 of CS/CS/HB 1021 creates subsection 553.79(20), Florida Statutes, which restricts a political subdivision (including counties and municipalities) from adopting or enforcing any ordinance or imposing any building permit or other development order requirement that contains any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of cooperate branding identity on real property or improvements thereon used in activities conducted under chapter 526 (sale of liquid fuels) or in carrying out business activities defined as a franchise by the Federal Trade Commission.
- A political subdivision (including counties and municipalities) may not adopt or enforce any ordinance or impose any building permit or other development order requirement that imposes any requirement on the design, construction or location of signage advertising the retail price of gasoline that are in accordance with the requirements (under sale of liquid fuels statutes), which prevents the signage from

- being clearly visible and legible to drivers of approaching motor vehicles from a vantage point on any lane of traffic in either direction of a roadway abutting the gas station premises and meets specified height, width and spacing standards.
- The above two preemptions do not affect any requirement for design and construction in the Florida Building Code. All ordinances and requirements are hereby preempted and superseded by 553.79(20), F.S., and the preemption applies retroactively. The preemptions do not apply to property located in a designated historic district.
 - A “building code administrator,” “building official,” or “building code inspector” may be a person who is on contract with a municipality or a county. The bill also modifies the requirements for a person to take the examination for certification as a building code inspector or plans examiner.
 - The Building Code Administrators and Inspectors Board must by rule establish: reciprocity of certification with any other state that requires an examination administered by the International Code Council; that an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of an internship period; various other provisions relating to persons in an internship program; and that a building code inspector or plans examiner who has a standard certification may seek an additional certification in another category by completing a specified internship program.
 - Under the current law alternative plans review and inspection process, a “private provider” may include a person licensed as a building code administrator.
 - The bill provides it is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permit requirements when hiring a private provider for plans review and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.
 - A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in section 373.621, Florida Statutes. Any such technical amendment carried forward into the next edition of the code is subject to review or modification.
 - The Florida Building Commission must adopt any updates to specified codes or any other code to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the U. S. Department of Housing and Urban Development. The commission must adopt updated codes by rule.
 - The bill amends provisions of current law relating to amendments or modifications to the Florida Building Code.
 - The Florida Building Commission may not: adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard; or adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

- The Florida Building Commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.
- The Florida Building Commission must amend the Florida Building Code-Energy Conservation to eliminate duplicative commissioning reporting requirements for HVAC and electrical systems; and authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer.
- A county, municipality, special taxing district, public utility, or private utility may not require an impact fee or payment for a separate water connection for a one-family or two-family dwelling fire sprinkler system if the capacity required is hydraulically available at the property line. The account holder of the one-family or two-family dwelling must notify the county, municipality, special district, public utility, or private utility of the installation of the separate water connection in the applicable permit. The separate water connection may only be used for one-family or two-family dwelling fire sprinkler systems and if used for other purposes, full base and volume charges may be applied.
- A county, municipality, special district, public utility, or private utility may not charge a water or sewer rate to a one-family or two-family dwelling that requires a larger water meter solely due to the installation of fire sprinklers above that which is charged to a one-family and two-family dwelling with a base meter. If the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.
- A local government may not require an owner of a residence to obtain a permit to paint such residence, regardless of whether the residence is owned by a limited liability company.

Effective date: July 1, 2017.