



City of Fort Lauderdale

2019 Session - Final Report

On behalf of Ronald L. Book, Kelly Mallette, and myself, we would like to first and foremost extend our appreciation for the continued opportunity to represent the City of Fort Lauderdale.

After a one-day extension to vote on the budget and budget related bills, the Legislature adjourned, Sine Die, May 4, 2019 at 2:03 pm. Included in this report are summaries of legislation affecting local governments considered during the 2019 Regular Session.

LEGISLATIVE ISSUES: The list below indicates bills that passed and those that did not pass for quick reference of bills contained in our weekly reports throughout Session. Following this list is a comprehensive summary of each of the bills listed. Should you need further information, please do not hesitate to email or call. We are happy to provide further detail on these or any other issues of interest to you.

Bills That Passed:

- Texting and Driving – Primary Offense / School Crossing, School Zone, Construction Zone – Hands Free Use Required
- Collection of Residential Recyclable Materials/Single-Use Plastic Straws/Moratorium on Local Regulation
- Private Property Rights/Tree Trimming/Restrictions on Local Regulation
- Permit Fees
- Impact Fees
- Vegetable Gardens/Preemption
- Federal Immigration Enforcement (Sanctuary Cities)
- Vaping - implements the vaping ban provision of Amendment 9 which passed by 68.92% in the November 2018 election.

Bills That Did Not Pass:

- Preemption of Various Local Occupation Licensing Regulation
 - Governmental Powers/Preemptions/Multiple
 - Vacation Rental Regulation/Preemption
 - Preemption of Local Regulations/Sunscreen and alternate/generated power sources
 - Private Property Rights Protection /"Bert J. Harris, Jr., Private Property Rights Protection Act"
 - Expanded Uses of Unmanned Aircraft-Drones
 - Local Government Public Construction Works
 - Traffic Infraction Detector Repeal (Red Light Cameras)
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➤ **BILLS THAT PASSED:**

Texting and Driving – Primary Offense / School Crossing, School Zone, Construction Zone – Hands Free Use Required

HB 107 has passed the full House and Senate and awaits action by the Governor. The bill as passed contains two overall goals which are listed below. The bill:

- Authorizes texting and driving as a primary offense.
- Authorizes as a primary offense, talking on a phone “in a hand held manner” while driving in a school crossing, a school zone, and a work zone when workers are present.

The legislation specifically:

- Makes clear that the officer is required to let the driver know his or her right to refuse to turn over the phone, cannot access it without a warrant, the officer cannot confiscate the phone without a warrant, cannot obtain consent from the driver to search the phone through coercion, and the bill states that if the driver consents to a cell phone search, it has to be done voluntarily and unequivocally.
- States that officers must record race and ethnicity of the driver and report this data to FDLE. Local law enforcement will be required to maintain records of this data and FDLE must report the data to the Governor and Legislature annually, beginning February of 2020.
- Language was amended in the Senate to specifically separate out talking on a phone “in a hand held manner” while in a school crossing, school zone, and work zones when workers are present.
 - This section creates a time frame for a warning period for the use of cell phones in these areas from October 1, 2019 through December 31, 2019 that an officer may stop vehicles to issue a verbal or written warning to educate and inform the public.
 - Effective January 1, 2020, a law enforcement officer may stop and issue a citation to persons driving and talking on the phone “in a hand held manner” in these areas.
 - Creates exceptions to this section which are as follows: an individual performing an official duty while as a driver of an emergency vehicle, an individual reporting an emergency or crime, receiving messages that are navigation in nature, safety related information, radio broadcasts, or using the device in a hands-free manner.
 - The specific section above that requires the officer to inform the driver of his or her rights is also written to apply to this section.
 - This section also includes the requirement to record the race and ethnicity of the driver and report data to FDLE, local law enforcement would also be required to record and keep this information, lastly, FDLE would be required to report this to the Governor and Legislature annually.
 - Any person who violates this section commits a noncriminal traffic infraction, punishable as a moving violation, and would have 3 points be assessed against his or her driver’s license. For a first offense, however, in lieu of the penalty and the assessment of points, a person could choose to participate in a wireless communications device driving safety program approved by the DHSMV. After which, the penalty may be waived by the clerk of court, and the assessment of points must be waived. Additionally, the clerk may dismiss a case and assess court costs for a person cited for a first time violation if the person shows the clerk proof of purchase of equipment that allows his or her personal phone be used in a hands-free manner.

Additionally, the bill also allows for the following:

- DHSMV in consultation with DOT, is authorized to implement a statewide campaign to raise awareness of and encourage compliance with this new law.
- DHSMV will contract with counties, local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide campaign.
- Except where otherwise noted above, this law would take effect July 1, 2019.

HB 107 has passed both the House and Senate and is awaiting action by the Governor.

Collection of Residential Recyclable Materials / Single Use Plastic Straws: HB 771

This bill would require counties and municipalities to address contamination of recyclable material in contracts; prohibit counties and municipalities from requiring collection or transport of contaminated recyclable material by residential recycling collectors; and specify required contract provisions in residential recycling collector and materials recovery facility contracts with counties and municipalities.

Important to note: HB 771 was amended to include the language creating a moratorium on local government regulation of single-use plastic straws. This moratorium would be lifted July 1, 2024. In that time, the Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to complete an analysis of each ordinance or regulation adopted by the governing body of a county, municipality, or special district in Florida to restrict or prohibit the use of single-use plastic straws. The study's scope must include, but is not limited to, gathering information pertaining to the data and conclusions on which the county, municipality, or special district used in adopting such ordinance or regulation.

HB 771 has passed both the House and Senate and is awaiting action by the Governor.

Private Property Rights / Tree Trimming and Regulation HB 1159

HB 1159 does the following:

- Prohibits local governments from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.
- Prohibits a local government from requiring a property owner to replant a tree that was pruned, trimmed, or removed.
- Clarifies that this legislation does not apply to mangroves.
- Removes the requirement that a property owner receive approval by the local government before requesting an electric utility to maintain vegetation in the adjacent utility right-of-way.
- Requires the County property appraiser to post a Property Owner Bill of Rights on their websites. This would include the following seven (7) property rights spelled out in the bill, which are the right to acquire, possess, and protect your property, to use and enjoy your property, to exclude others from your property, to dispose of your property, the right to due process, to just compensation for property taken for a public purpose and the right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.
- Takes effect July 1, 2019.

HB 1159 has passed both the House and Senate and is awaiting action by the Governor.

Permit Fees HB 127, SB 142

- The bills require governing bodies of counties and municipalities to post permit and inspection fee schedules and building permit and inspection utilization reports on their websites by December 31, 2020.
- After December 31, 2020, the governing body of a local government that provides a schedule of fees must update its building permit and inspection utilization report before adjusting the fee schedule.

HB 127/SB 142 has passed both the House and Senate and is awaiting action by the Governor.

Impact Fees HB 207/SB 144

The bill prohibits any local government from requiring payment of impact fees any time prior to issuing a building permit. Local governments will be required to designate the funds collected by the impact fees for acquiring, constructing, or improving the capital facilities to benefit the new users. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless the expenditure has a rational nexus to the impact generated by the new construction. The bill further excludes fees charged for connecting to water and sewer systems.

HB 207/SB 144 has passed the House and Senate and is awaiting action by the Governor.

Vegetable Gardens/Preemption: SB 82

This legislation was a priority of Senator Bradley, the Chair of the Senate Appropriations committee, and a priority of the Senate and House leadership. SB 82 preempts any local ordinance or regulation of vegetable gardens on residential property. This is aimed at a local government in South Florida that filed suit against a resident that grew a vegetable garden in the front yard. The bill does allow for local governments to regulate water use during drought conditions, fertilizer use, or control of invasive species.

SB 82 passed the House and Senate and is awaiting action by the Governor.

Federal Immigration Enforcement (Sanctuary Cities) SB 168

This bill moves to ensure state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. With approximately 225 amendments filed to this bill, the majority of which failed or were discussed and withdrawn, this proved to be one of the most discussed and debated bills of this Session. SB 168 did pass as amended, on the last day of the regular Session.

The main requirements of this legislation are as follows:

- Prohibits sanctuary jurisdictions and any sanctuary policies as defined in s. 908.102, F.S. that are in effect on the effective date of this act, violates the public policy of Florida and must be repealed within 90 days.
- State and local entities are to use best efforts to support the enforcement of federal immigration law.
- A state entity, law enforcement agency, or local governmental entity, or an employee, an agent, or representative of the entity or agency may not prohibit or in any way restrict law enforcement agency from taking any of the following actions with respect to information regarding a person's immigration status:
 - Complying with an immigration detainer
 - Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency
 - Providing a federal immigration agency access to an inmate for interview
 - Participating in any program or agreement authorized under section 287 of the Immigration and Nationality Act, 8 73U.S.C. s. 1357; or
 - Providing a federal immigration agency with an inmate's incarceration status or release date.
- Requires a government body to use its best efforts to support the enforcement of federal immigration law.

Regarding the enforcement portion of this legislation, the bill sets forth the following:

- Any executive or administrative state, county, or municipal officer who violates his or her duties under this chapter may be subject to action by the Governor in the exercise of his or her authority under the State Constitution and state law. Pursuant to s. 1(b), Art. IV of the State Constitution, the Governor may initiate judicial proceedings in the name of the state against such officers to enforce compliance with any duty under this chapter or restrain any unauthorized act contrary to this chapter.

- In addition, the Attorney General may file suit against a local governmental entity or local law enforcement agency in a court of competent jurisdiction for declaratory or injunctive relief for a violation of this chapter.
- If a local governmental entity or local law enforcement agency violates this chapter, the court must enjoin the unlawful sanctuary policy. The court has continuing jurisdiction over the parties and subject matter and may enforce its orders with the initiation of contempt proceedings as provided by law.
- An order approving a consent decree or granting an injunction must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy that violates this chapter.

SB 168 has passed the House and Senate and is awaiting action by the Governor.

Vaping: SB 7012

This bill implements the vaping ban provision of Amendment 9 which passed by 68.92% in the November 2018 election. The Amendment bans the use of vapor-generating electronic devices, or vaping, consistent with the current prohibition of tobacco smoking in enclosed indoor workplaces. In summary, the vaping ban is to mirror the existing ban on smoking, which includes a prohibition for anyone under the age of 18 years old from vaping in, on, or within 1,000 feet of school property.

Specifically, this bill implements Amendment 9 by requiring the following:

- Prohibits vaping in enclosed indoor workplaces consistent with the current prohibition on indoor smoking;
- Provides exceptions for vaping in enclosed indoor workplaces consistent with the current exceptions for smoking;
- Creates a new exception for vapor-generating electronic device retailers;
- Creates penalties for vaping-related violations consistent with the current penalties for smoking-related violations;
- Clarifies that counties and municipalities may adopt local ordinances that impose more restrictive regulations on vaping;
- Requires public announcements in mass transportation terminals to include statements on the vaping prohibition;
- Prohibits anyone under the age of 18 years old from vaping in, on, or within 1,000 feet of school property.
- The bill provides an effective date of July 1, 2019.

SB 7012 was signed into law by the Governor, Chapter No. 2019-14.

➤ BILLS THAT DID NOT PASS:

Preemption of Local Regulations HB 3

The bill would have accomplished the following:

- Preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing adopted prior to July 1, 2019, will continue to be effective until July 1, 2021, at which time it will expire.
- Any licensing of occupations authorized by general law is exempt from the preemption.
- Prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within DBPR
- Precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, and decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

- Authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. (Meaning, local journeyman licensing is exempt from this preemption).

HB 3 did not pass.

Governmental Powers/Preemptions HB 1299

HB 1299 would have enacted a number of restrictions on local governments, including the following:

- Except as provided for in s. 171.205, F.S., a municipality may not purchase land within another municipality's boundaries without their consent;
- The governmental entity may not attempt to annex an area within another governmental entity's jurisdiction without the other governmental entity's consent.
- Prohibits municipalities from levying taxes on cigarettes, cigars, nicotine products, and dispensing devices.
- Preempts to the state, the establishment of the minimum age for the sale or delivery of tobacco products, nicotine products, and nicotine dispensing devices.
- Amends the Florida Drug and Cosmetic Act to preempt the regulation of over-the-counter proprietary drugs and cosmetics, to the state. (meant to target the sale of sunscreen as it pertains to the reported damage to coral reef)
- Amends s. 526 F.S., the sale of liquid fuels; brake fluid section, to include a preemption to the state and to DEM, the establishment of the requirements for alternate generated power sources, including transfer switches.
- A municipality, county, or other local government entity may not adopt, enforce, or implement any ordinance, rule, or law that would impose additional requirements for maximum fuel supply or safe temperature and cooling requirements related to the comprehensive emergency management plan.
- Preempts to the state the regulation of single use straws and allows for businesses to distribute plastic straws upon request or through a dispenser. (this preemption would not apply to a hospital or nursing, rehabilitation, or other health care facility). *A moratorium on local regulation of plastic straws passed in HB 771
- Clarifies that local governments cannot regulate a food service establishment regulation of single-use plastic straws, which is preempted to the state. Stating that a municipality, county, or other local governmental entity may not adopt, enforce, or implement any ordinance, rule, or law that would restrict a food service establishment from distributing single-use plastic straws to customers. *A moratorium on local regulation of plastic straws passed in HB 771

HB 1299 did not pass.

Vacation Rental Regulation/Preemption: HB 987/SB 824

Vacation Rental preemption of local government regulation did not pass. Throughout this Session, we have worked closely with the FLC to oppose this bill with members of both the House and Senate. During week 6, HB 987 was heard in the Commerce Committee and as part of the push with the team of lobbyists that work with local governments and with the League of Cities, several amendments were offered in an effort to weigh down the bill and highlight several problems with state regulation and local government preemption. These amendments are briefly summarized below. After lengthy debate, testimony from cities and the public, and two 15 minute extensions of the committee's end time, this bill passed 13 – 11. However, the Senate chose not to hear the bill later this same day in its scheduled committee. Below is a recap from week 6 of the amendments offered to the vacation rental bill in the final House committee hearing.

Amendments included the following issues:

- Required that an operator of a vacation rental maintain liability insurance coverage, to be in force at all times to cover vacation rental guests. (passed)
- Reinstated the grandfather clause. (failed)
- Required a registry and notification process for sexual offenders choosing to stay in a vacation rental. (passed)
- Required vacation rental inspections by DBPR and to do these inspections, the division has the right of entry and access to vacation rental establishments at any reasonable time. (in two amendments - failed)
- Attempted to clarify that Condominium and Homeowner Associations rules and bylaws remain in effect as it pertains to limiting an owner's use of property as a vacation rental. (passed)
- Addressed local government regulation of vacation rentals except a property also used as a homestead, as described in s. 6(a), Art. VII of the State Constitution. (failed)

HB 987/SB 824 did not pass.

Preemption of Local Regulations (Sunscreen and alternate/generated power sources): SB 588

This legislation would have prohibited a local government adopting or enforcing any regulation regarding over-the-counter proprietary drugs and cosmetics. This specifically targets sunscreen regulation by local governments who are concerned about damaging coral reef.

Additionally, the bill would have preempted requirements for alternate generated power sources for motor fuel dispensing facilities, including transfer switches, to the state and the Division of Emergency Management.

SB 588 did not pass.

Private Property Rights Protection: CS/CS/HB 1383/SB 1720

Named the "Bert J. Harris, Jr., Private Property Rights Protection Act" the major points of this legislation would have accomplished the following:

- Change the timeframe under which a claimant must notify the government before filing an action from 150 days to 90 days;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Remove the prohibition that the factfinder cannot consider business damages in making a determination of the claimant's damages; and
- Change the process for attorney fees and costs by:
 - Allowing a claimant to recover attorney fees and costs incurred from the time he or she files notice with the government instead of from the time he or she files suit;
 - Allowing any prevailing claimant, regardless of the reasonableness of the settlement offer, to recover attorney fees and costs; and
 - Removing the provision allowing a government to recover attorney fees and costs.

CS/CS/HB 1383/SB 1720 did not pass.

Expanded Uses of Unmanned Aircraft-Drones SB 75/SB 766

The bill expands exceptions to the prohibition on drone use for surveillance by law enforcement, adding to the list of exceptions to include the following:

- To assist a law enforcement agency in crowd control involving a group of 50 people or more.
- To assist a law enforcement agency in traffic management, except that a drone may not be used to gather evidence to enforce traffic infractions.
- To facilitate a law enforcement agency's collection of evidence at a crime scene or traffic crash scene.

- By a state agency or political subdivision for the assessment of damage due to a flood, wildfire, or natural disaster or for vegetation or wildlife management on publicly owned land
- By certified fire department personnel to perform tasks within the scope and practice authorized under their certifications

HB 75/SB 766 did not pass.

Local Government Public Construction Works HB 167/SB 806

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

HB 167/SB 806 did not pass.

Traffic Infraction Detector Repeal (Red Light Cameras) HB 6003, SB 622

- Repeals provisions relating to Mark Wandall Traffic Safety Program and the authorization to use traffic infraction detectors.
- Repeals provisions relating to distribution of penalties, transitional implementation, and placement and installation.

HB 6003/SB 622 did not pass.

➤ On Saturday, May 4, 2019 at 2:03 pm, the Florida Legislature adjourned sine die.