



April 19, 2019

Action Alert: *Bills Threatening Local Tobacco Control Gain Traction*

Language preempting counties and cities from regulating the marketing of tobacco and nicotine products as well as dispensing devices is now in two separate House bills, [HB 1299 \(Governmental Powers\)](#) by Rep. Roach and [HB 7119 \(Use of Regulated Substances\)](#) by Rep. Duran and the House Health & Human Services Committee.

Several counties and cities have ordinances that address marketing and product placement of tobacco/nicotine products. For example, an ordinance might prohibit nicotine marketing, such as Juul, near candy aisles. The majority of such ordinances are aimed at keeping products away from children and teens. The preemption language does not appear in any Senate bill at this time.

If your county has an ordinance that will be preempted, please reach out to your House delegation members encouraging them to stop this preemption and encourage your Senate delegation members to block any legislation containing the preemption.

An American Cancer Society press release on this measure can be found [here](#).

HB 1299 passed its final committee of reference, House Commerce, on Thursday, April 18 with 15 votes in support and seven in opposition. HB 7119 has been placed on the special order calendar in the House.

FAC Contact:

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Up Next Week...

FAC Continues to Fight Attorney Fee Bills, Stressing Impact to Existing Ordinances

[SB 1140 \(Attorney Fees and Costs\)](#) by Sen. Hutson would mandate that courts award attorneys' fees and damages in actions where an aggrieved party has brought an action against a local government alleging that a proposed or adopted local government ordinance is expressly preempted by state law. Fees and damages could also be sought in cases brought against existing ordinances. The bill does not enumerate statutes that constitute express preemptions for purposes of awarding fees and damages. As amended, only the prevailing party may be granted fees and damages. If the local government "withdraws" an ordinance from consideration or repeals the ordinance within 21 days from a court determining it was preempted, attorneys' fees cannot be granted.

This bill will be heard in the Rules Committee, its final Senate committee, on **Tuesday, April 23 at 2:00 p.m.** As amended, the bill could allow prevailing challengers to recover fees and damages if an ordinance is determined to be preempted by s. 553.79(20), which prohibits local governments from imposing certain requirements on the signage advertising the retail price of gasoline or that conflict with or impair a corporate trademark or corporate branding identity. Aside from this exception, growth management ordinance challenges would not entitle parties to fees.

[HB 829 \(Attorney Fees and Costs\)](#) by Rep. Sabatini is on House Special Order Calendar for

Wednesday, April 24. As amended, HB 829 only grants attorneys' fees and damages against local governments, and would not allow the local government to recover fees and damages if it is the prevailing party.

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Click here to visit the Florida Association of Counties **PREEMPTION TRACKER**

Health & Safety

Texting While Driving Heads to Senate & House Floor

Texting While Driving has been an issue FAC has advocated for the last few sessions and is a Health & Safety committee priority. [SB 76 \(Texting While Driving\)](#) by Sen. Simpson passed its last committee and has now been placed on the special order calendar for Tuesday, April 23. The Florida Ban on Texting While Driving Law no longer contains components related to distracted driving, instead including only texting while driving. The bill changes current enforcement of the ban from a secondary offense to a primary offense, which will allow a law enforcement officer to stop a vehicle solely for texting while driving. The bill does not change the existing penalties, nor does it create new penalties. It also maintains the current exceptions to the texting ban and maintains that the texting ban does not apply to a stationary motor vehicle.

The House companion, [HB 107 \(Texting While Driving\)](#) by Reps. Slosberg and Toledo, has passed all of its committees of reference and is placed on the special order calendar for Tuesday, April 23.

NEWS ARTICLES ON TEXTING WHILE DRIVING

[Hands off: Distracted driving bill expands, advances to Senate floor](#)

FLAPOL

Homelessness Bill Passes Final House Committee

[HB 1353 \(Homelessness\)](#) by Rep. Altman passed its last committee of reference, Health & Human Services, and is heading to the House floor. HB 1353 revises the state's approach to homelessness by adopting the federal definition for "homeless" and aligning other state requirements with HUD requirements. The bill amends sections of law outlining two approaches to housing services, Rapid Re-Housing and Housing First. It requires that individuals and families being considered for Rapid Re-Housing assistance be assessed and prioritized through the continuum of care's coordinated entry system. The bill also removes the program element indicating a benefit for an individual to have a background check and complete rehabilitation for any addiction to substances when participating in Housing First services. FAC is supportive of this legislation.

Incarcerated Women Bill Heads to House Floor

[HB 49 \(Incarcerated Women\)](#) by Rep. Jones passed its last committee of reference and has been placed on special order calendar for next Tuesday, April 23. CS/HB 49 requires county detention centers to provide certain healthcare products at no cost to each incarcerated woman. The bill prohibits male correctional officers from conducting a pat-down, strip-search, or body cavity search on an incarcerated woman unless the woman presents an immediate risk of harm to herself or others and a female correctional employee is not available.

Its Senate companion, [SB 332 \(Incarcerated Women\)](#) by Sen. Pizzo, received favorable support in its last stop on Thursday, April 18. FAC is in support of this legislation.

911 Services Bill Passes Final Committee in House & Senate

[HB 441 \(911 Services\)](#) by Rep. DuBose passed its last committee of reference on Thursday, April 18. CS/HB 441 included amendment language that would add a degree of rationality to the bill.

The bill requires each county to develop a plan to implement countywide text-to-911 service and, by January 1, 2022, to enact a system that allows for text-to-911 service. The bill also provides for direct radio communication between each public-safety answering point (PSAP) and first responders outside the PSAP's normal service area, for which the PSAP may reasonably receive 911 communications. These provisions should allow for more efficient dispatch of first responders in response to 911 communications. These provisions address recommendations of the Marjory Stoneman Douglas High School Public Safety Commission concerning inter-agency communications and 911 call routing. The bill has been placed on Special Calendar to be heard on the floor next week. Since the bill now addresses the concerns raised by the urban counties regarding inter-agency communication, FAC is in support of this bill.

Its Senate companion, [SB 536 \(911 Services\)](#) by Sen. Brandes, passed its final committee of reference, Appropriations, on Thursday, April 18.

Courthouse Security Bill Heads to House Floor

[HB 639 \(Security in Trial Court Facilities\)](#) by Rep. Perez has been placed on the special order calendar in the House for Wednesday, April 24. The bill requires each sheriff to coordinate with specified entities to develop a comprehensive plan for security of trial court facilities; specifies that sheriffs & chief judges retain certain authority; specifies that sheriffs & their deputies, employees, & contractors are officers of court under specified circumstances. The bill also requires each county sheriff to coordinate with the board of county commissioners and the chief judge of the judicial circuit to develop a comprehensive security plan for trial court facilities. The sheriff retains authority over the implementation and provision of law enforcement services under the plan. The chief judge retains decision making authority to protect due process rights, such as in the scheduling and conduct of judicial proceedings. The bill explains that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for court facilities. Since the bill has language that includes counties, FAC is in support of this legislation.

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Growth Management, Agriculture, Transportation, and Environment

Small Cell Preemption Passes Last Committees in House & Senate

This year's small cell bill bells cleared their last committees on Thursday, April 18. [HB 693 \(Communication Services\)](#) by Rep. Fischer passed the House Commerce Committee, while [SB 1000 \(Communication Services\)](#) by Sen. Hutson passed the Senate Appropriations Committee with one dissenting vote.

As reported previously, while the bill makes several changes to current law, FAC remains focused on three primary issues. First, for those counties that have adopted an undergrounding ordinance, wireless service providers would be exempt from complying under, certain conditions. Second, counties would be unable to condition approval of a new pole by requiring the wireless service provider to demonstrate the collocation is not technically or legally feasible, under certain conditions. Finally, the bill places all new utility poles under the 60-day "shot clock", not just collocations.

FAC continues to work with stakeholders and legislators to make the legislation less onerous on counties.

House Unveils Water Quality Improvements Bill

The House State Affairs Committee unveiled its water quality improvements bill as a [proposed committee substitute \(PCS\)](#) to HB 973 (Onsite Sewage Treatment and Disposal Systems) by Rep. Payne. The PCS combines various provisions of the original HB 973 which dealt primarily with septic tanks, and provisions from SB 1758 (Water Quality Improvements), Sen. Mayfield's water quality

improvements bill, along with a handful of other water quality related bills that were filed this session.

The PCS would transfer the septic tank program from DOH to DEP by July 1, 2020 and direct the two departments to submit recommendations for the transfer to the Governor and Legislature by December 1, 2019. The PCS would also allow use of certain advanced septic systems that have been approved by a national sanitation foundation as of July 1, 2019. The PCS would require a Basin Management Action Plan (BMAP) for a nutrient Total Maximum Daily Load (TMDL) to include a wastewater treatment plan and an Onsite Sewage Treatment and Disposal System (i.e. septic tanks) remediation plan, which would identify cost-effective and financially feasible projects. Such plans would be developed by DEP along with DOH, water management districts, local governments, and wastewater facilities. The PCS also includes a provision on sewage spill notifications, which would require local governments to publish notice of an unauthorized spill of sewage or partially treated wastewater on a public website; the section does not contain the penalties or certified mail requirements that were in the separate standalone bill on spill notifications. The PCS also establishes a wastewater grant program, subject to legislative appropriation.

FAC recognizes the House's efforts to advance legislation on water quality improvements this session and appreciates that the proposal does not include some of the onerous penalty sections that have been proposed this session.



SAVE THE DATE
The next Water Policy Committee
meeting will be at the
**2019 Annual Conference
& Education Exposition**
HYATT REGENCY ORLANDO | ORANGE COUNTY
On Wednesday, June 12, 2019

Tree Trimming Bill Amended in House to Limit Scope, Senate Bill Differs Drastically

[HB 1159 \(Private Property Rights\)](#) by Rep. La Rosa passed out of its final committee this week, with an amendment removing the confusing language that made tree removal, pruning, or trimming allowable if a property owner determined that a tree was damaged, diseased, or dangerous due to a storm watch or warning or declared state of emergency.

As amended, the bill provides that a local government may not require a notice, application, approval, permit, fee, or mitigation for tree pruning, trimming, or removal on residential property if the owner obtains documentation that the tree presents a danger to persons or property from a certified arborist or landscape architect. The bill also prohibits local governments from requiring replanting of trees removed per the provisions of the bill. Additionally, the bill clarifies that it does not apply to local governments with delegated mangrove protection authority.

The amendment significantly limited the scope of the bill and therefore FAC is now neutral on HB 1159. [SB 1400 \(Private Property Rights\)](#), which has not been amended since its first committee stop and is significantly different than HB 1159, has one more committee stop in Senate Rules, which has its final scheduled meeting on Tuesday, April 23.

Residential Recycling Bills Pass Final Senate & House Committees

[SB 816 \(Environmental Regulation\)](#) by Sen. Perry and [HB 771 \(Environmental Regulation\)](#) by Rep. Overdorf both passed out of their final committees this week. The bills require counties and cities to address the contamination of recyclable material in contracts entered into for the collection, transport and processing of residential recycling materials. Such contracts must define "contaminated recyclable material" in a manner that is appropriate for the local community, accounting for available markets and other relevant factors, and include terms and conditions to define and reduce levels of

contamination. Additionally, the bills provide that a recyclable materials collector or facility is not required to collect, transport or process “contaminated recyclable material,” as defined in the applicable contract. HB 771 would only apply to contracts executed or renewed after July 1, 2019, while SB 816 applies to contracts executed or renewed after October 1, 2019.

Rep. Overdorf offered an amendment, which was adopted, during HB 771’s final committee hearing to add a five-year moratorium on local regulation of single-use plastic straws. FAC opposed the amendment, since the moratorium was not connected to a study or conditioned upon any other factors. The bills are now headed to the House and Senate floors.

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