



March 29, 2019

Action Alert: State Preemption of Vacation Rentals

[HB 987 \(Vacation Rentals\)](#) by Rep. Jamie Grant will be heard in the House Government Operations & Technology Appropriations Subcommittee on Monday, April 1 at noon. The bill turns back the clock on local regulation of vacation rentals.

Vacation Rentals are defined in Florida Statute (509.013) as "Public Lodging Establishments" and as a "private enterprise" that are subject to state licensure under the Department of Business and Professional Regulation. Vacation Rentals are usually located in single family residential areas, where permanent residents represent most of the homeowners.

In 2011, the Florida Legislature passed legislation blocking local governments from "regulating, restricting, or prohibiting" vacation rental properties, while allowing local regulations to exist if adopted before June 1, 2011. After recognizing that the 2011 legislation went too far, the Legislature passed HB 356 in 2014, restoring partial Home Rule authority to counties. In effect, current law allows counties to enact certain regulations (parking, occupancy standards, local registration) but precludes them from passing regulations that prohibit vacation rentals or limit the duration and frequency of stays.

HB 987 unravels any form of local vacation rental oversight and regulation by the following:

- Preempting to the state the regulation of vacation rentals, including, but not limited to, inspection, licensing, and occupancy limits;
- Removing the 2011 grandfathering clause;
- Adding occupancy limits, inspections, and licensing to the list of prohibited local laws, ordinances, or regulations;
- Allowing local laws, ordinances and regulations to apply to vacation rentals as long as they apply uniformly to all residential properties.

If your county has concerns with this legislation, we urge you to contact members of your delegation and committee members. For a list of committee members, please [click here](#).

A copy of HB 987 and the staff analysis can be found [here](#).

FAC Legislative Day

Thank you for an extremely successful event!



Florida's local governments made a substantial presence in Tallahassee this week as they advocated to protect home rule.

Our Legislative Day kicked off with a Legislative Briefing featuring Attorney General Ashley Moody, Jared Moskowitz (Director of the Florida Division of Emergency Management), Jamal Sowell (President & CEO of Enterprise Florida), Representative Charlie Stone, and a regional representative from the office of U.S. Senator Rick Scott. Many of the speakers touched on the need for state, local, and federal partnerships in order to build stronger communities and a better Florida overall.

As part of her remarks, Rick Scott representative has provided contact information for other representatives from his office around the state. Please [click here](#) to view the list.

The FAC Water Policy Committee held its first meeting on Thursday in Tallahassee in conjunction with the 2019 FAC Legislative Day. Governor Ron DeSantis and the Secretary of the Florida Department of Environmental Protection, Noah Valenstein, presented their priorities and initiatives to the committee while Representative Chip LaMarca also spoke to attendees regarding HB 325 (Coastal Management), a bill he is sponsoring that would revise the criteria DEP must use to determine and assign funding priorities for beach management and erosion control projects. Overall, the committee started to build relationships with these stakeholders across the state and discuss a holistic approach to water policy with regards to the next steps for the committee.

For those of you that met with legislators and members of your delegation throughout the week, thank you for assistance! It will no doubt be helpful to the Association's legislative team as the Legislative Session presses forward.

NEWS ARTICLES ON FAC LEGISLATIVE DAY

From the Office of Governor Ron DeSantis:

[PHOTO RELEASE: Governor Ron DeSantis Speaks to the Florida Association of Counties Water Policy Committee](#)



FLAPOL

[Ashley Moody talks trafficking, opioids at Florida Association of Counties event](#)

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[Jamal Sowell defends Enterprise Florida in Florida Association of Counties speech](#)

Finance, Tax, & Administration

Discretionary Sales Surtaxes (HB 5) Passes Final House Committee

[HB 5 \(Discretionary Sales Surtaxes\)](#) by Rep. DiCeglie increases the thresholds to adopt local option surtaxes authorized under 212.055. For those levies required to be adopted by referendum, the bill would require a two-thirds vote of the county governing body to place the surtax on the ballot, the referenda could only be on the general election ballot, and would be required to be approved by 2/3 (66.66%) of the electors voting on the question.

An amendment to the bill adopted by the committee would make procedural changes to the performance audit requirement adopted in 2018. These changes would require the county or school board to notify OPPAGA of the pending referendum at least 180 days before the referendum is held. As amended, the bill would render any referendum that does not comply with the performance audit requirements invalid. The 2018 law was silent as to a notification timeline and penalty for non-compliance. The bill as amended also creates a process for citizen-initiated referenda to undergo the performance audit and be placed on the ballot.

The new provisions related to the performance audit would apply to referenda held after January 1, 2020. The remaining portions of the bill take effect upon becoming law (10 days from approval by the Governor). The bill passed favorably out of its final House committee, State Affairs, on Thursday March 28, 2019.

The Senate companion, [SB 336 \(Local Tax Referenda\)](#) by Sen. Brandes would allow local tax referenda be held only at a general election. This bill has been amended to allow referenda currently scheduled to be held prior to July 1, 2019. FAC is working to extend this date to allow all currently scheduled referenda to proceed in 2019. This bill was heard in Senate Finance & Tax, its second of three committees, on Wednesday, March 20.

Attorney Fee Bill Passes 2nd House Committee, Scheduled to Be Heard in 2nd Senate Committee Next Week

[SB 1140 \(Attorney Fees and Cost\)](#) 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 is scheduled to be heard in its second of three committees, Community Affairs, Tuesday, April 2 at 2:00 pm.

[HB 829 \(Attorney Fees and Cost\)](#) passed favorably through its second of three committees, House Local Affairs, on Tuesday, March 26. 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.

Regional Rural Development Grants Passes Final Senate Committee

[SB 596 \(Regional Rural Development Grants\)](#) by Sen. Albritton was heard in its final committee of reference, Appropriations, and received unanimous support. Its companion bill, [HB 671 \(Regional Rural Development Grants Program\)](#) by Rep. Clemons was reported favorably by the House Workforce Development and Tourism Subcommittee on Thursday, March 7. This was its first of three stops in the House.

The bill would increase the annual grant awards for regional economic development organizations, which are defined in the bill to be those economic organizations located within a designated rural area of opportunity. It would also reduce the local match requirement. The bill would increase the maximum allowable expenditure from the Regional Rural Development Grant Program from \$750,000 to \$1 million. The bill would have no fiscal impact on state funds, however, because the appropriation for the Rural Community Development Revolving Loan Fund, which funds the grant program, remains unchanged. The bill would also increase the percentage of the project costs that could be covered by the Rural Infrastructure Fund and clarifies that eligible infrastructure projects include access to broadband internet service. Finally, the bill would require contracts associated with funding from both programs include certain provisions and be posted online at least 14 days prior to execution.

MOBILE APP LAUNCH

NACo has partnered with the Local Initiatives Support Corporation (LISC) and the Rural Community Assistance Partnership (RCAP) to develop a mobile app designed to identify areas with low or no connectivity to help ensure adequate funding for broadband infrastructure is provided.



Find us in the app store!

[Click here to learn more!](#)



Local Government Fiscal Transparency Passes Final House Committee

[HB 15 \(Local Government Fiscal Transparency\)](#) by Rep. Burton would require significant additional notice requirements for consideration of tax increases and issuance of tax-supported debt. The bill also requires local government to maintain a 5-year voting record of every vote on an action that would result in a tax increase or new debt; and requires additional notices must be provided on the web.

The bill includes additional public hearing requirements. A preliminary public hearing must be held 14 days prior to the public hearing to vote on a tax increase or issuance of new debt and the public hearing to take the action must be noticed by a quarter page ad in a newspaper of general circulation with a newly created notice inconsistent with the existing notice requirements for ordinances. It creates a “debt affordability ratio” that must be calculated and included in notices.

This bill is was heard in its final committee of reference in the House on Thursday, March 28. Companion bill, [SB 1350 \(Local Government Fiscal Transparency\)](#), has not yet been heard in its first committee of reference.

Burt Harris Bill Requiring Local Governments to Treat Similar Properties the Same Way Passes First House Committee

[HB 1383 \(Private Property Rights Protection\)](#) by Rep. Jamie Grant was heard and passed favorably in its first of three committees on Monday, March 25. It's Senate companion, [SB 1720 \(Property Rights\)](#) by Sen. Lee is scheduled to be heard in the Senate Judiciary Committee, its first committee of reference, on Monday, April 1, 2019.

Both bills would require local government to treat similar property in the same way for settlements of Burt Harris claims. Local governments would then have to offer ‘similarly situated’ residential property within the same political subdivision the same terms. The bill also shortens the time frame under which the claimant must notify government from 150 days to 90 days and allows the fact-finder to consider business damages. Lastly, it changes the process for attorney's fees awards by making it easier for claimants to receive fees and removing the ability for governments to receive fees.

FAC Contact:

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NEWS ARTICLES ON PREEMPTION

[Florida Legislature launches 'reckless assault' on towns, taxpayers](#)

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Health & Safety

Text-to-911 Bill Passes First House Committee

[HB 441 \(E911 Systems\)](#) by Rep. DuBose requires each county to develop a plan to implement countywide text-to-911 service and, by January 1, 2022, and to later enact a system that allows for text-to-911 service. All Florida counties have either fully implemented text-to-911 service or expect to implement text-to-911 service by the deadline outlined in the bill.

The Energy & Utilities Subcommittee adopted three amendments to the bill and passed the bill as a committee substitute. The bill as amended provides that an important state interest is served by ensuring that text-to-911 service is available in all 67 counties and requires the development and implementation of communications systems that allow direct radio communication between each Public Safety Answering Points (PSAP) and first responders outside the PSAP's normal service area.

The bill has two remaining committees of reference. Similar bill, [SB 536 \(911 Service\)](#) by Sen. Brandes is in its last committee of reference.

Texting While Driving Bills Pass Senate & House Committees

[SB 76 \(Texting While Driving\)](#) by Sen. Simpson would make texting while driving a primary offense, authorizing law enforcement officers to stop motor vehicles to issue written warnings or citations for texting while driving.

The bill passed favorably through its third of four committee stops in the Senate on March 25. It's House companion, [HB 107 \(Texting While Driving\)](#), by Rep. Toledo passed favorably through its first committee on March 26. Its remaining committee of reference is State Affairs. This is a FAC Health & Safety Committee policy priority and FAC supported both bills in committee last week.

Courthouse Security Bill to Include Counties

[SB 762 \(Duties and Obligations of Sheriffs\)](#) by Sen. Gruters is on the agenda for its second committee of reference, Infrastructure and Security, on Tuesday, April 2 at 2:00 pm.

SB 762 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.

Identical bill, [HB 639 \(Security in Trial Court Facilities\)](#) by Rep. Perez is currently in the Justice Appropriations Subcommittee.

FAC Contact:

For additional information, contact Tonnelle Graham at tgraham@flcounties.com.

Growth Management, Agriculture, Transportation, and Environment

Tree Trimming Bill to be Heard in First Committee Next Week

[SB 1400 \(Private Property Rights\)](#) by Sen. Albritton will be heard in the Senate Community Affairs Committee on Tuesday, April 2. This bill prohibits local governments from requiring a permit for tree trimming and removal under certain circumstances and would encourage residents to trim and remove trees before, during and after a storm, creating dangerous debris and possibly putting people in harm's way.

The bill would make it impossible for local governments to protect their tree canopies and preserve heritage trees, which could have significant consequences. Trees are a key resilience strategy, they help with floodplain management, fight urban heat island effect, and provide critical habitat for resident and migrating birds.

Please contact the members of [Senate Community Affairs](#) and urge them to vote no on SB 1400.

Scooter Preemption Bills Pass 1st Senate & 2nd House Committee

[HB 453 \(Micromobility Devices and Motorized Scooters\)](#) by Rep. Toledo addresses emerging urban transportation innovations by creating a new statutory definition for "micromobility devices" to mean "any motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips, which is incapable of traveling at speeds greater than 20 miles per hour on level ground." The bill also revises the current statutory definition of "motorized scooter" to include any vehicle or micromobility device powered by a motor with or without a seat or saddle for the use of the rider (i.e., scooters).

HB 453 effectively preempts local government regulation by permitting local to regulate in a manner that does not exceed state or federal law. Accordingly, counties would be unable to regulate the

number of vendors, number of devices, or direct them to any specific location in the community. The bill passed the Local and Veteran Affairs Committee on Tuesday, March 26 and will be heard next in the House State Affairs Committee.

The Senate Companion, [SB 542 \(\(Micromobility Devices and Motorized Scooters\)\)](#) by Sen. Brandes, was amended in Infrastructure and Security Committee on Tuesday, March 26 and preserves local regulatory oversight of these devices. SB 542 will be heard next in the Senate Transportation and Economic Development Committee.

Bill Penalizing Wastewater Treatment Facilities for Unlawful Sewage Discharges Advances in the House

[HB 141 \(Water Quality Improvements\)](#) by Rep. Fine establishes an Indian River Lagoon grant program and requires each grant to have a minimum 50 percent local match. The bill also requires public notification by wastewater treatment facilities that unlawfully discharge raw or partially treated sewage into any waterway or aquifer within 24 hours of discovering the discharge. Written notification must include the date and time of discharge, the status of the discharge, the estimated volume of the discharge, the location or address of the discharge, a description of the area affected, and the name and phone number of all elected local government officials who have authority over the facility responsible for the discharge. The bill requires notification be sent to customers contingent on the volume of the spill and how far from the discharge the customer lives.

Finally, the bill creates additional civil penalties for the unlawful discharge of raw or partially treated sewage by a wastewater treatment facility. The bill states that if a facility unlawfully discharges into any waterway or aquifer it must remit to the department an amount equal to \$1 for each gallon of sewage discharged; or calculate the gallons of sewage discharged, and, with the department's approval, spend \$2 for each gallon discharged to upgrade or re-mediate the problems which gave rise to the unlawful discharge. The bill further requires a facility to remit a minimum penalty of \$10,000 if the number of gallons of sewage discharged cannot be calculated or estimated.

HB 141 passed its second of three committees this week. [SB 216 \(Water Quality Improvements\)](#) by Sen. Gruters is in its second of three committees. FAC staff continues to work to educate policymakers about our concerns with this bill and to encourage an incentive based approach to reducing spills, rather than penalizing wastewater treatment facilities.

Small Cell Infrastructure Preemption Bills Pass First Committee in House & Senate

[HB 693 \(Communication Services\)](#) by Rep. Fischer passed the House Energy and Utilities Subcommittee this week. The bill is a companion measure to [SB 1000 \(Communication Services\)](#), which expands the 2017 Advanced Wireless Infrastructure Deployment Act.

Among the bill's provisions, HB 693 places all new utility poles under the 60-day "shot clock"; prohibits local governments from applying any regulatory standard regarding the placement of wireless facilities on private property; restricts administrative remedies by allowing wireless providers to access courts sooner; prohibits local governments from requiring communications facilities location maps within certain distances; and, prohibits local governments from requiring undergrounding of wireless facilities, even in areas where existing utilities are required to be placed underground.

During the March 26 meeting of the Senate Community Affairs Committee, SB 1000 was amended to more closely match HB 693.

Biosolids Management Bill Passes Second House Committee

[HB 405 \(Biosolids Management\)](#) by Rep. Grall directs DEP to adopt rules for biosolids management to permit their use in a manner that minimizes the migration of nutrients to prevent impairment of surface water and groundwater quality. This will include the establishment of site-specific groundwater and surface water monitoring requirements. Finally, the bill requires that an ordinance, moratorium, or regulation adopted before February 1, 2019, by a municipality or county, relating to the land application of Class B biosolids, remain in effect until the ordinance, moratorium, or regulation expires or is repealed by the municipality or county, or until rules adopted by DEP are in effect. HB 405 passed its second of three committees this week.

Its Senate companion, [SB 1278 \(Biosolids Management\)](#) by Sen. Mayfield has two committees remaining.

Zoning Restriction on Affordable Housing Passes First Committee in Both Senate & House

[SB 1730 \(Community Development and Housing\)](#) by Sen. Lee passed the Senate Community Affairs Committee on Wednesday, March 20. The bill prohibits local governments from implementing any form of "inclusionary zoning" to address affordable housing.

Specially, the bill prohibits a local government from:

1. mandating or establishing a maximum sales price or lease rental for privately produced dwelling units;
2. requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants;
3. requiring the provision of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.

A similar measure, [HB 7103 \(Property Development\)](#) by the House Community Affairs Committee and Rep. Fischer and has been referenced to the House Judiciary and State Affairs Committee. FAC is opposed to both SB 1730 and HB 7103.

Permitting Preemptions Continue to Pass Their Committees

This week, the construction industry continued its assault on local home rule, supporting no fewer than seven bills that undermine locally-adopted regulations. The following bills passed their committees with little to no opposition:

[HB 167 \(Local Government Public Construction Works\)](#) by Rep. Andrade and [SB 806 \(Local Government Public Construction Works\)](#) by Sen. Perry specify 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 bills require 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. For county construction and reconstruction projects of roads and bridges utilizing proceeds from the constitutional gas tax, the bills specify that total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of materials. SB 806 passed unanimously out Community Affairs and is now in its second of three committee of reference, while HB 167 passed unanimously out of its final committee of reference, House State Affairs on Thursday, March 28.

[HB 715 \(Florida Building Code Enforcement\)](#) by Rep. Robinson prohibits a local government from carrying forward a budget balance greater than its average cost for enforcing the Code for the preceding four fiscal years. The bill requires each local government to use any excess funds to rebate and reduce fees, and provide funding to non-profit organizations that expand training opportunities for the construction industry. The bill passed the House Business and Professions Subcommittee unanimously. This bill was temporarily postponed in House State Affairs on Thursday, March 28. Its companion, [SB 1036 \(Florida Building Code\)](#), by Sen. Gruters, has not yet been heard in committee.

[HB 101 \(Public Construction\)](#) by Rep. Andrade and [SB 246 \(Public Construction\)](#) by Sen. Hooper reduces the amount of payment retainage a local government can hold from public construction projects from 10% to 5% (for the first half of the project) and from 5% to 2.5% (for the balance of the project). HB 101 is now ready for the floor, while SB 246 has one more committee stop (Appropriations).

Controversial Fracking Bill Pass Both Senate & House Committees

[HB 7029 \(Fracking\)](#) by the Agriculture & Natural Resources Subcommittee passed its second of three committees this week. While the bill prohibits fracking, there is controversy over the definition of fracking. Similar bill, [SB 7064 \(Oil Drilling\)](#) is in its third of four committees and is similarly controversial.

Several other versions of fracking ban legislation are filed which would require a more comprehensive ban on fracking, but none appear to be gaining traction.

Impact Fee Bills Continue to Advance Through Both Chambers

This session's primary impact fee bills continue to make their way through both chambers. [HB 207 \(Impact Fees\)](#) by Rep. Donalds passed out of the House on Wednesday, March 27. [SB 144 \(Impact Fees\)](#) by Sen. Gruters passed 19-0 out of the Senate Appropriations Committee on Thursday, March 28.

Few changes have been made to the bills and both are centered on two primary issues:

1. codifying in statute the so-called Dual-Rational Nexus test provision – a standard applied by the courts to test whether an impact fee ordinance is legal;
2. establishing the collection point for impacts to occur no earlier than at the time a building permit issued.

FAC remains opposed to the bills.

Vessel Bills Pass House & Senate Committees

[SB 1666 \(Vessels\)](#) by Sen. Flores deletes the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine. It defines the term "long-term stored vessel" to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period. The bill also requires FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.

To read more about this bill, please [click here](#).

Right of Entry Bill Passes Second House Committee

[HB 767 \(Right of Entry/Mineral Rights\)](#) by Rep. Robinson releases a right of entry that has been reserved for mineral rights held by a local government, water management district, or other agency of the state for property that is less than 20 acres of contiguous tract under the same ownership. HB 767 passed its second of three committees this week.

[SB 1500 \(Right of Entry\)](#) by Sen. Simmons will be heard in its second of three committees on Tuesday, April 2.

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NEWS ARTICLES ON ENVIRONMENTAL POLICY

[Fines for sewage spills passes House committee](#)



FAC Data Point

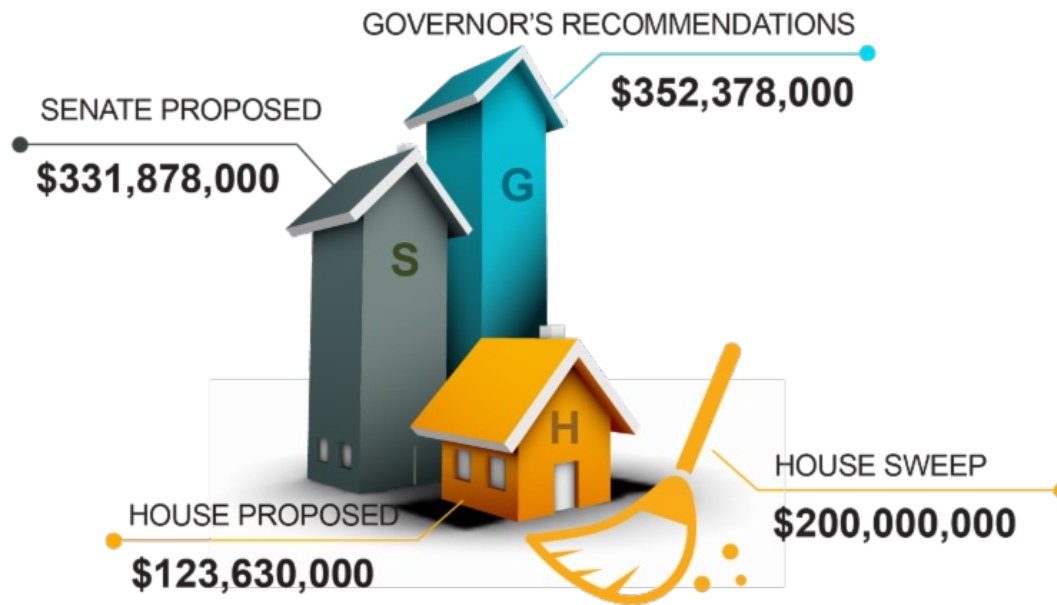
House & Senate Release Their Budgets with Large Disparity in Affordable Housing Funding

The House and the Senate released their budget proposals last week. They are about \$400 million apart and both short of the \$91.3 billion proposed by Governor Ron DeSantis. Key difference between the two budgets include a vast difference in the overall spending levels on education and the environment, a \$30 million split on school mental health services, Hurricane Michael recovery, affordable housing, and on the future of Visit Florida.

Of importance to FAC membership, the Senate and the House varied significantly on the allocations of the Sadowski Affordable Housing Trust Funds. While the Senate matched the Governor's recommendation of fully committing the more than \$300 million to affordable housing, the House proposal committed an abysmal \$123 million, sweeping the remaining \$200 million.

The Florida Association of Counties has long supported appropriating the full amount of dedicated revenues from the Local Government Housing Trust Fund and State Housing Trust Fund toward affordable housing and opposes the Legislature transferring these funds other areas of the State Budget.

To view a full budget analysis, please [click here](#).



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