# CUA-05 PROTECTING LOCAL PLANNING AFTER HURRICANES
## STAFF ANALYSIS

| PROPOSAL INFORMATION | | | |
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| **SUBMITTING COUNTY:** | Flagler County | | |
| **SPONSOR CONTACT:** | Andy Dance, Commissioner; adance@flaglercounty.gov; 386-627-5600 | | |
| **FAC COMMITTEE:** | Community & Urban Affairs | **CROSS-CLAIMS:** | None identified |
| **FAC STAFF:** | J. Scala | **DATE:** | September 30, 2026 |

*This staff analysis is based on the proposal as submitted and does not reflect an adopted position of the Florida Association of Counties.*

## POLICY PROPOSAL:

FAC supports legislation amending SB 180 (2025) to narrow its land-use preemptions to properties and regulatory actions reasonably related to hurricane damage, rebuilding, or disaster recovery, while preserving local government authority over planning, infrastructure, environmental protection, and land development matters unrelated to storm recovery.

## I. SUMMARY:

Flagler County resubmits the 2025–26 "SB 180 Glitch Fix" policy (CUA-7, adopted), asking FAC to support narrowing the land-use preemptions in CS/CS/SB 180 (2025), ch. 2025-190, Laws of Florida, to properties and actions reasonably related to hurricane recovery. Sections 18 and 28 bar "more restrictive or burdensome" local land-use action statewide through October 1, 2027 — retroactive to August 1, 2024 — and for one year after a future hurricane within 100 miles.

Implementation confirms the breadth the county describes: an August 2026 ruling invalidated Palm Coast's impact fee increases under the act, and courts have declined to enjoin or invalidate it, leaving legislation as the operative route to relief. The FAC-developed vehicle, SB 840 (2026), passed the Senate 38–0 before dying unheard in a House subcommittee. The bill implemented most but not all adopted concepts. The proposal is protective of home rule, and is not an unfunded mandate.

## II. PRESENT SITUATION:

The locally adopted comprehensive plan controls land-use decisions, implemented through land development regulations (ss. 163.3167, 163.3194, 163.3202, F.S.); impact fees are adopted by ordinance under s. 163.31801, F.S.

CS/CS/SB 180 (2025), a broad emergency-management act signed June 26, 2025 (ch. 2025-190), overlays this framework. Section 18 created s. 252.422, F.S.: for one year after a hurricane makes landfall, an "impacted local government" — a county listed in a federal disaster declaration located entirely or partially within 100 miles of the storm's hurricane track, or any municipality within it — may not propose or adopt a moratorium on construction, reconstruction, or redevelopment of any property; a more restrictive or burdensome amendment to its comprehensive plan or land development regulations; or a more restrictive or burdensome review procedure. Narrow exceptions cover privately initiated applications, pre-landfall plan transmittals, and areas of critical state concern. Any person may sue to enforce, with a preliminary-injunction entitlement after a 14-day cure notice, one-way attorney fees, and summary procedure.

Section 28, uncodified, applies the same prohibitions to every county in the Hurricanes Debby (DR-4806), Helene (DR-4828), or Milton (DR-4834) declarations and their municipalities, before October 1, 2027. Violations are null and void ab initio; the section is retroactive to August 1, 2024, expires June 30, 2028, and gives residents and business owners a fee-shifted cause of action. All 67 counties were listed in at least one declaration, so Section 28 operates statewide.

Separately, s. 2 of the act created s. 163.31795, F.S., barring NFIP-participating local governments from adopting or enforcing a cumulative substantial-improvement ("lookback") period. Flagler County repealed its period by ordinance to conform, amid reported FEMA concerns about NFIP consistency. This effectively preempts a practice the federal program administrator affirmatively rewards.

In Flagler Home Builders Association v. City of Palm Coast (Fla. 7th Cir.), the court on August 7, 2026, granted summary judgment on the SB 180 claim, ruling the city's 2025 fire, parks, and transportation impact fee increases are land development regulations "considerably more burdensome" than the prior schedule and therefore violate the act; the city is weighing an appeal, and remaining Impact Fee Act claims are pending. The Department of Commerce has applied the act administratively, rejecting City of Ocoee plan amendments now in DOAH proceedings. The submission further reports Flagler County's revised tree-protection regulations, developed through ordinary planning before the act, remain in abeyance under Section 28's retroactive window.

Twenty-five cities and counties, 1000 Friends of Florida, and an individual filed consolidated constitutional challenges in the Second Judicial Circuit in fall 2025. The court denied a preliminary injunction in December 2025, held 1000 Friends lacked standing, and in late February 2026 dismissed four of five local-government counts — primarily on standing grounds rather than the merits, with leave to amend certain claims. The local governments' unfunded-mandate count (Art. VII, s. 18, Fla. Const.) and individual claims alleging vagueness and arbitrariness remain pending. No court has reached the merits and the act remains in effect.

## III. EFFECT OF THE PROPOSAL:

The proposal amends s. 252.422, F.S., and Section 28 of ch. 2025-190 — the exact structure of SB 840 (2026), which FAC helped develop and supplies drafted starting text. As to s. 252.422, the proposal:

- narrows "impacted local government" from 100 to 50 miles and requires a major disaster declaration;
- converts the "propose or adopt" bans into enforcement restrictions tied to hurricane damage (moratoria restricted only as they delay repair of storm-damaged improvements, with water, sewer, and stormwater allowances; post-landfall amendments unenforceable only against repair or reconstruction of damaged improvements; procedural changes restricted only where they extend final-action timeframes);
- adds exceptions for measures required by state or federal law and for floodplain standards consistent with 44 C.F.R. part 60, the NFIP minimum criteria;
- confines the restrictions to damage requiring a repair permit, with documentation authority;
- deletes the s. 252.422(4) enforcement framework entirely; and
- adds a Florida Building Code savings clause covering local technical amendments, which otherwise expire each code cycle (s. 553.73(4)(e)).

As to Section 28, SB 840 terminated the Debby/Helene/Milton restrictions on June 30, 2026, and expired the section the same day.

Measured against the adopted 2025–26 policy, SB 840 implemented nearly all of CUA-7's enumerated concepts:

- the damage nexus,
- the permit-required definition,
- enforcement rather than proposal/adoption,
- the narrowed width,
- the state-and-federal-law exemption,
- a shortened Section 28
- and went beyond the concept of narrowing the challenge provision by deleting it.

Three adopted concepts were not carried into SB 840 and remain open for a 2027 vehicle or a supplemental bill; each is a committee scope decision. First, an express exemption of impact fees from the "more restrictive or burdensome" provisions. Second, repeal of the s. 163.31795 lookback prohibition, with NFIP and Community Rating System consequences; the statement as submitted reaches only the land-use preemptions, so this element requires amending its scope. Third, defining or eliminating the undefined terms "more restrictive or burdensome". A fourth, technical decision attends refiling: SB 840's dates are past, so a 2027 vehicle must repeal Section 28 or terminate it on its effective date.

The proposal presents an achievable, previously drafted, Senate-passed statutory change with no internal inconsistency; it narrows rather than repeals the act, preserving protections for repair and rebuilding of storm-damaged property.

## IV. COUNTY IMPACT:

- Restored local authority: resume comprehensive plan amendments, land development regulation updates, impact fee adoption, environmental and tree-protection regulation, and infrastructure-driven standards not tied to storm-damaged property — prospectively under the narrowed s. 252.422 and, upon Section 28's termination, in the counties frozen since August 1, 2024.
- Must still comply: for one year after a future hurricane within 50 miles under a major disaster declaration, a county could not enforce a moratorium delaying repair of damaged improvements (outside the water and sewer allowances), apply post-landfall stricter standards to their repair or reconstruction, or extend final-action timeframes.
- Litigation exposure removed: any-person standing, the automatic preliminary injunction, one-way fee shifting, and summary procedure are deleted.
- Scope: all 67 counties — Section 28 reaches statewide through the 2024 declarations; s. 252.422's trigger will reach most counties in future seasons, with the 50-mile revision narrowing that class.

**Protective of Home Rule:** Yes — the proposal restores county planning, land development, and fee-setting authority preempted beyond the storm-recovery context, and narrows rather than expands state preemption.

## V. FISCAL IMPACT:

- No Revenue Estimating Conference or EDR estimate exists or is expected; the Senate Rules Committee analysis of SB 840 identified no tax or fee issues and no government-sector impact.
- Indeterminate positive effect on county revenue capacity: the bill restores authority to adopt or enforce impact fee schedules and other exactions frozen or exposed under the act.
- Reduced litigation exposure: deleting the one-way fee entitlement and automatic preliminary injunction removes an asymmetric cost risk on ordinary land-use action; savings indeterminate.

**Unfunded Mandate (Art. VII, s. 18, Fla. Const.):** No — the proposal expands local authority and imposes no new duty, cost, or revenue reduction on counties or municipalities.

## VI. LEGISLATIVE & FAC HISTORY:

- Lineage: the 2025 act extended a model built for Hurricanes Ian and Nicole — ch. 2023-304 (CS/CS/SB 250) restricted counties within 100 miles of those landfalls through October 1, 2024; ch. 2023-349 (2023 Spec. Sess. C) extended it to October 1, 2026 for ten hardest-hit Ian counties. Both tied their moratorium prohibitions to property damaged by the named storms, as does Section 28; s. 252.422(2)(a) dropped that limitation ("any property")
- CS/CS/SB 180 (DiCeglie), signed June 26, 2025, extended the model statewide; ss. 18 and 28 were added late in session.
- 2026: SB 840 (DiCeglie; co-sponsors Mayfield, Gaetz) — favorable in Community Affairs, Judiciary, and Rules; passed the Senate 38–0 on February 19, 2026; died unheard in House Intergovernmental Affairs at sine die; the sponsor's final-day floor amendment carrying its text onto CS/CS/CS/HB 399 was withdrawn. HB 1465 (Andrade), a compare bill taking a different approach, died unheard.
- Past FAC statements: 2025–26—CUA-7—SB 180 Glitch Fix (adopted): SUPPORT legislation narrowing the scope of the preemption of land use regulations in SB 180 passed during the 2025 session (2026 Legislative Action Plan). Jointly submitted by Pasco, Charlotte, and Flagler with an enumerated concepts list; this submission updates it
- Guiding Principles coverage: Preemptions & Mandates A (preemption as a deliberate exception for genuine statewide concern); Growth Management B (the locally adopted plan as controlling instrument); Growth Management F (county authority to require development's proportionate share through impact fees).

**BoCC action: the Flagler County BoCC has voted to support the proposal, as stated in the submission.**

DRAFT