

## 2024 FHBA Legislative and Regulatory Issues For Review and Discussion

*Not listed in any order of priority inside the tiers*

### Issues to Support

#### Tier 1 (Seek Legislative Bill Sponsors or Strategy for Passage)

**Mitigation Banking:** Mitigation credits are used in each basin located in water management districts to mitigate wetland areas for development. Currently, some basins in the state are out of mitigation credits and more are expected to run out of mitigation credits in the next few years. If mitigation credits are not available, development will halt in these areas. Unlike Florida Department of Environmental Protection and/or water management district credits, the Army Corps of Engineers allows mitigation credits to be purchased from surrounding basins if certain conditions are met.

- *FHBA Position: Seek legislation that would allow mitigation credits in areas deplete of credits to be purchased from surrounding basins located within the water management district.*

**Funding for Advanced Nutrient Reduction Systems for New Homes:** In 2020, the Legislature authorized DEP to implement a grant program which would allow retrofitting of older OSTDs in order to upgrade these systems to newer nutrient-reducing OSTDs. There are new standards required in BMAP areas and the technologies needed to meet these standards are more expensive. Beginning July 1, 2023, new construction built within a BMAP area must either be connected to a county or municipal sewer line or an enhanced nutrient-reducing OSTD must be installed. Revisions to the current process used to develop OSTD standards in Florida must be pursued, specifically focusing on how nationally-recognized viable systems can be adopted in Florida.

- *FHBA position: First, support legislation that simplifies the process by which new OSTD technologies are approved in Florida. Secondly, support legislation expanding DEP's grant program to include new construction, thereby reducing the increased cost of the enhanced nutrient-reducing system.*

**Condo Amendments related to the Icon Brickell Case:** The Icon Brickell case resulted in confusion of what constitutes condominium “common elements” in the context of mixed -unit development. The statutes need to be clarified in regard to what is included with mixed- use planning and whether or not they are considered condominium common elements.

- *FHBA Position: Support legislation clarifying that portions of shared utilities within a mixed- unit development may be considered common elements.*

**Sadowski Funding:** Prior to the Legislative Session of 2023, funding from the Sadowski Trust Fund was swept to provide financial resources for other state programs. Full funding of the Sadowski

Program creates an economic benefit in excess of \$3 billion and creates nearly 30,000 jobs while providing safe and affordable housing.

- *FHBA Position: Support full funding of the Sadowski Program and legislation requiring trust fund monies to be spent on their requisite purpose.*

**Mobility Fees and Impact Fees (Dual Payments and Transfer of Credits):** Although the mobility fee is designed to replace the transportation impact fee, builders and developers from multiple areas of the state have reported paying for both impact fees *and* mobility fees. Some developers holding impact fee credits have also reported that they are not allowed to transfer those credits to pending mobility fees. Charging both impact fees and mobility fees for the same project and rejecting the transferability of the credits between the two only serve to artificially increase the cost of housing.

- *FHBA Position: Seek legislation prohibiting the imposition of both a mobility fee and an impact fee for the same project and allow impact fee credits to be applied to a mobility fee.*

**High School Workforce:** Currently, anyone under the age of 18 is not allowed to work on a residential or commercial job site unless they are in an on-the-job training or apprenticeship program. To increase the labor workforce as well as introduce students into the construction industry, the hiring of this age group would be a valuable tool in the toolbox of the housing industry.

- *FHBA Position: Support state legislation that would allow for expanded hiring practices of high school students in construction- related jobs.*

**Local Heat Ordinance Preemption:** Local governments have the ability to implement ordinances that are not specific policy areas designated to the state or federal governments. While heat - related standards are already implemented and currently being reviewed by OSHA, Miami-Dade County is trying to implement standards that many industry groups feel are vague and overburdensome while also attaching civil liability to employers if violated.

- *FHBA Position: Support state legislation preempting local governments from implementing heat standards that go beyond OSHA standards.*

**Building Code and Four-Story Residence:** New requirements under the 2023 Florida Building Code would require a residence of four stories or higher to be inspected like multi-family condominium requirements. This would also mean that these inspection reports would be made public because they are required to be posted on DBPR's website.

- *FHBA Position: Oppose this change to the Florida Building Code and look at any legislation that would exempt this information from being publicly disclosed.*

**Enhance Prosecution of Construction Fraud:** Key Legislators are once again asking us to develop solutions which address construction fraud. The CILB is the regulatory agency overseeing

construction licensing yet is often unable to effectively discipline bad actors. Elimination of the self-attestation requirement would also help to curb any fraudulent practices.

- *FHBA Position: Help Legislators craft policies which enhance the ability to discipline bad actors while ensuring that good actors are not unduly prosecuted.*

## **TIER 2 (Further exploring the feasibility of an issue)**

**Permit Timing:** A single-family residential building permit is supposed to be issued within thirty (30) days of receiving a completed application unless the permit fails to follow the Florida Building Code, local ordinances, or an unusual circumstance. However, in some areas of the state, obtaining a building permit can take up to six months. The delay in issuing permits is often caused by departments other than the building department and creates many issues, including increased construction costs and delayed occupancy. The FHBA has been asked to provide suggestions for streamlining the permitting process and reducing regulatory burdens. To date, our suggestions are:

- Reduce the Need for Dual Permits – Gas and Plumbing/Pool and Electric
- Streamline re-activating an expiring permit
- Do away with-having to file NOC with the Building Department (Cape Coral language)
- Concurrent Review Process and/or eliminate the need for a waiver for concurrent review.
- Reduce the need for engineer- sealed irrigation permit plans that can take up to six months.
- *FHBA position: Work with legislators and stakeholders to create uniform permit timelines that allow for a more streamlined and thorough review of permits. Support legislation that reduces administrative barriers to building and development.*

**Impact Fees and Extraordinary Circumstances:** Local governments collect impact fees from new development projects to help fund local government infrastructure necessary to expand local services. Local governments, school districts, and special districts are only allowed to increase 25% in two equal increments after the increase is implemented, unless there is an “extraordinary circumstance.” When the use of extraordinary circumstances was introduced, the legislative intent was that it would be used for large growth developments, not “tourism” or other arbitrary reasons unrelated to unique population growth.

- *FHBA position: Support legislation limiting the “extraordinary circumstances” exception in the impact fee legislation.*

**Reducing the impact of FEMA’s 50% rule following a named storm:** Hurricanes Michael and Ian taught us several lessons, including how FEMA’s 50% rule is applied retroactively after a named storm and how this can have severe consequences for homeowners. Depending upon the local

government's "look back" provision, homeowners can be penalized for remodeling a portion of their home, only to have a named storm create damage that propels them beyond the 50% threshold. Some local governments reduced their look- back periods significantly following hurricane Ian to help address this situation.

- *FHBA Position: Support legislation pre-empting look- back periods following a named storm or declaration of an emergency.*

**Real Property Transfer Fee:** The FHBA continues to support a local option real-estate transfer fee in lieu of an impact fee. This would have the effect of spreading the financing for growth to more people at minimal rate in lieu of new construction paying for growth when all benefit.

- *FHBA Position: Support legislation which creates a local option real estate transfer fee in lieu of an impact fee.*

**Use of Public Land for Affordable Housing:** In 2023, FHBA supported SB 102, the Affordable Housing Bill. The new statute requires local government to catalog surplus public lands and publish this information, but does not require local governments to use this surplus land for affordable housing.

- *FHBA Position: Support legislature that encourages or creates fewer barriers to utilizing public lands for affordable housing.*

**Complete Building Permit Application Standard:** FHBA members have been running into different standards statewide of what is considered to be a "complete application" for building permits. In order to alleviate any confusion as to what is required when submitting permit applications in different jurisdictions, the FHBA will look into legislation and rulemaking changes that would create a state standard of what should be considered a "complete application".

*FHBA Position: Support state legislation creating a standard for application completeness of building permits.*

**General Contractors and Building Inspections:** FHBA members have routinely voiced concerns over the lack of qualified building inspectors. Building contractors have a unique understanding of the Florida Building Code and could help bridge the gap of the need for qualified inspectors within the industry. General contractors who have no financial stake or fiduciary responsibilities within a building project could qualify as a private provider building inspector.

*FHBA Position: Support state legislation that would allow for the need to have more qualified individuals to inspect buildings in order to complete building permits.*

### **TIER 3 (Further exploring the feasibility of an issue)**

**Immigration:** The 2023 Florida Legislature passed an immigration reform bill that directly affected the home -building industry. Several FHBA members report fewer workers on the job site. Information from broadcasted reports as well as feedback from our own FHBA members, tells us

that immigrants are leaving the state. In many cases, this is due to having heard misleading information about the bill and in other circumstances immigrants are sensing a hostile work environment.

- *FHBA Position: Monitoring the court cases and seize upon any opportunity to effectuate appropriate legislative changes.*

**Foreign Ownership of Real Property:** The Foreign Ownership of Real Property bill creates another hurdle and more paperwork for the transfer of property. The Foreign Ownership bill has been the subject of lawsuits and may require glitches or complete re-writes depending upon court action.

- *FHBA Position: Monitoring the court cases and seize upon any opportunity to effectuate appropriate legislative changes.*

**Strongtown:** In some Florida counties, anti-development and housing activists are trying to convince local governments the cost to repair used infrastructure should be included in the cost of new developments in addition to impact and/or mobility fee requirements. This would allow local governments to determine the cost to repair infrastructure over a 30-year period and charge developers and/or builders this anticipated amount at the time of permitting.

- *FHBA Position: Support state legislation preempting local governments the ability to be able to implement additional fee programs for repairing infrastructure and roads.*

**HVAC Coolant Requirement Liability Protection:** Under last year's SB 360, Causes of Action Based on Improvements to Real Property (Defects) bill, strengthening actions to be brought for "material violations." FHBA counsel has drafted an opinion that these liability protections would be covered under this new statute. If you would like a copy of the memo, please reach out to Ashton Mears (amears@fhba.com) and she will email you a copy.

## Issues to Oppose

**Stormwater Rule Ratification:** With the passage of SB 712 in 2020, DEP was required to empanel a technical advisory committee to review stormwater rules and nutrient reductions. After the technical advisory committee was completed, DEP was then required to promulgate new stormwater rules. After diligent work with DEP and the H2O Coalition to make meaningful changes to the proposed 2023 Stormwater Rule, the FHBA was forced to oppose the ratification of the rule because of the high costs associated with implementing this proposal. The FHBA, along with the H2O Coalition, continues to work diligently to find a path forward where all stakeholders find a rule that is able to be implemented as SB 712 intended.

- *FHBA position: Continue working with the H2O Coalition to make meaningful change to the proposed stormwater rule, thereby being able to support its ratification by the Legislature. If appropriate changes are not made, the FHBA opposes ratification of the rule.*

**Universal Licensure:** During the 2023 Session, the Florida Legislature considered a “universal licensure” bill which created pathways for out of state and foreign trained professionals to become licensed in Florida. At the behest of the FHBA, sponsors of the legislation added a provision requiring individuals from outside of Florida to pass an exam and take a course on the Florida Building Code. The bill did not pass.

- *FHBA Position: The FHBA opposes any attempts to grant a license without adhering to Florida's licensure process. The language requiring passage of the exam and completion of a building code CE course may temper our opposition but does not signal support.*

**Efforts to weaken Building Defects Reform:** In 2023, FHBA championed historic legislation reducing the statute of repose from 10 to 7 years in construction defects, changing the statute of limitations to begin at the earliest instead of the latest, and allow each building of a multi-building complex to be considered separate when the statute of repose clock begins to run.

- *FHBA position: Oppose any legislation that would weaken the construction defects reforms.*

**Reducing a General Contractor's Ability to Construct Swimming Pools:** General contractors are allowed to build the structural components of swimming pools. The Swimming Pool Association is sponsoring a bill this year to limit the ability of general contractors to hold themselves out as swimming pool contractors. This would still allow general contractors to build the structural components, but would clarify Florida statutes and codify the CILB position.

- *FHBA Position: Oppose any legislation that would codify the CILB position that general contractors may not hold themselves out as swimming pool contractors and would limit the ability of general contractors to build the structural components of a swimming pool.*

## **Regulatory Issues:**

- Work with DEP to review septic, 404 and other permit timelines.
- Work with DEP to gain approval for additional nutrient-reducing OSTDs.
- Monitor CILB creation of Specialty licensure and grandfathering provisions of new specialty licensure rules.
- Florida Building Commission and building code meetings.