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## **BUILDING & FIRE CODE REGULATIONS**

It is an undisputed fact that the housing and construction industry suffered an economic tsunami during the recent recession. The Florida Home Builders Association believes the Legislature should work to remove unnecessary barriers to recovery for the housing industry. A key component of this recovery will be to eliminate duplicative processes and requirements in the building code and fire code development, training and educational process. Removing inconsistencies between the building and fire codes and eliminating duplicative burdensome regulations while still protecting the health, safety and welfare of Floridians remains a top priority of the FHBA.

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### **Florida Building & Fire Codes**

SB 1232 by Sen. Simpson (R-Trilby)

HB 915 by Rep. Eagle (R-Cape Coral)

HB 915 seeks to remedy building and fire code issues, including the following:

- Eliminating duplicative advanced code training requirements mandated by the Florida Building Commission;
- Granting statutory authority to Underwriters Laboratories (UL) to be an evaluation entity for product approvals;
- Clarifying the Department of Health's role relating to the maintenance of commercial swimming pools;
- Adding Division II contractors (subcontractors) to the Construction Recovery Fund;
- Addressing inconsistencies between fire and building codes regarding dead-end corridors and the change of occupancy definition;
- Allowing phased-permitting for large-scale projects;
- Clarifying that energy raters (RESNET, BPI, ASHRAE) and HVAC contractors may conduct air infiltration and duct tests and allows RESNET and BPI certified professionals to inspect;
- Establishes reasonable criteria to obtain building inspector certification; and
- Granting authority to combine fire and building code appeal boards where feasible.





## **WATER POLICY**

It is no secret that water policy discussions will dominate this year's legislative agenda. Proposals will seek to address how development impacts the quality of the state's spring waters. Industry related issues will range from severely limiting or prohibiting independent septic systems in springshed areas to requiring active (multi-pump) systems to remove septic nutrients. Some will advocate an outright ban in designated areas. Needless to say, the potential impact on Florida's building industry is great. In addition to policy decisions, it is critical that funds be allocated to implement the water resources bill that is ultimately adopted.

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### **Water Resources**

**SB 918 by Sen. Dean (R- Inverness)**

**HB 7003 Rep. Caldwell (R-Lehigh Acres)**

These are two very different bills in their approach. The House bill remains a process bill instead of a regulatory bill, relying on the Basin Area Management Plan (BMAP) to study the cause of the pollution problem and then tailor the appropriate response and actions. The Senate bill is much more prescriptive in its approach.

The FHBA believes:

- The BMAP should be the main operative document for identifying problems & implementing recovery strategies and projects, based on priorities over time. There should also be significant additional funding allocated to new BMAP programs for springs.
- There should be no identified statutorily prohibited onsite wastewater activities in a springshed area or protection zone.

At present, we believe the above guidelines are addressed better by the House bill than the current Senate bill version. No doubt, these are complex bills that will be the focus of legislative debate throughout the 2015 Session.

# APPROPRIATIONS

The FHBA has identified four major appropriations issues which, if adopted, will help strengthen the home building industry in Florida. Targeting the state's resources in the appropriate manner will serve to protect consumers, protect the environment, provide housing opportunities and provide a future workforce for the industry.

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## Affordable Housing

Though some policy makers suggest that the passage of Amendment One (requiring that 33% of documentary stamp revenues be used for environmental preservation) means resources will not be available for affordable housing, the FHBA and other members of the Sadowski Coalition quickly point out that even the materials supporting Amendment One note it should not impact affordable housing. Full funding of State and Local trust funds would result in \$266 million in housing activity with an economic benefit of over \$3 billion creating at least 25,000 jobs.

**SB 586 by Sen. Dean (R-Inverness)**

**HB 1291 by Rep. Boyd (R-Bradenton)**

Trust fund implementation bills should not permanently reduce the percentage of doc stamp revenues available for affordable housing. The House's current approach in HB 1291 maintains the current percentage of documentary stamp tax collections available for affordable housing.

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## Unlicensed Activity Funding

The FHBA will advocate to maintain current levels of unlicensed activity funding. Past efforts have resulted in a substantial increase in enforcement activities. Recent reports suggest the past investment is beginning to pay off as several localities have engaged in sting operations, arresting those unlicensed, combating fraud and preventing the construction of unsafe buildings.

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## Septic Study

The FHBA believes the state should complete its final funding (\$600,000) for the passive septic system study. Abandoning the study after investing \$4.5 million would be a poor use of taxpayer funds. If the study is forced to an incomplete end, the data will be inaccurate and unreliable. This study is critical in helping the State assess the water issues associated with onsite wastewater systems.

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## Future Builders of America

FHBA stands ready to assist the Future Builders of America if they seek additional state funding. Workforce shortage issues are severe in some cases. Establishing Future Builder of America chapters in schools is important for creating an appreciation and understanding of the construction trades. Last year's appropriation of \$250,000 is beginning to pay dividends.



## **CONSTRUCTION LIABILITY ISSUES**

If the industry is to continue its slow recovery from a serious recession, issues which potentially impede the recovery must be addressed. Addressing certain issues on the construction liability front sends a message that Florida's Legislature is committed to maintaining a vibrant economy and attracting more investment opportunities. Key liability reforms important for the home building industry include adding specificity to the Construction Defects Law and moving the Statute of Repose from ten years to seven years.

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### **Construction Defects Law**

SB 418 by Sen. Richter (R-Naples)

HB 87 by Rep. Passidomo (R-Naples)

The construction defects law was created to keep these claims out of the court room by providing notice to contractors about the alleged defects and an opportunity to effectuate repairs. Unfortunately, claim notices often lack specificity using broad language such as cracks in the walls in 20 units (without identifying which units) and that a construction code has been violated (without stipulating which code the claimant believes has been violated). The lack of specificity makes it difficult for the contractor to make repairs and keep the issue from going to court.

SB 418 and HB 87 seek to require greater specificity such as specifying which condo units have cracked walls and identifying which building code was allegedly violated.

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### **Statute of Repose**

SB 1158 by Sen. Stargel (R-Lakeland)

HB 501 by Rep. Fant (R-Jacksonville)

The Statute of Repose law is designed and intended to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim and ultimately foster certainty and finality in liability. Evidence from insurers strongly suggests that latent construction defects are known in less than the 10-year time frame. SB 1158 and HB 501 reduce the statute of repose for actions founded on the design, planning or construction of an improvement to real property from ten years to seven years. The statute of repose in neighboring states, such as Alabama, Georgia, Mississippi and South Carolina, is less than ten years. Florida needs to reduce its time frame to remain competitive.



## **EXACTIONS**

Exactions - those payments to state and local governments as a condition to secure a building permit - have been an ever-increasing cost of doing business for Florida home builders. As fees have risen, so have home prices, yet banks aren't financing the cost.

As a result, home buyers are being priced out of the market. Too often government spends revenues resulting from housing and economic development on needs other than infrastructure, leaving consumers to pay the bill.

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### **Impact Fees**

SB 850 by Sen. Hays (R-Umatilla)

HB 923 by Rep. Costello (R-Port Orange)

The bill allows county or municipal governments to pass an increase in documentary stamp taxes in lieu of levying an impact fee. Under this legislation, the doc stamp increase will be capped at \$1 per \$100 of valuation and the local county commissioners will make the decision. This local option fee provides another tool for local governments. In lieu of relying solely upon impact fees on new construction to pay for growth, this approach spreads the costs across a real-estate transaction and recognizes that the buyer of existing property may impact services as much, if not more, than an elderly couple building a house to down-size.

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### **Property Rights**

SB 284 by Sen. Diaz de la Protilla (R-Miami)

HB 383 by Rep. Edwards (D-Sunrise) and Perry (R-Gainesville)

Local government demands for cash, land or other exactions at the time of permitting must be related and proportional. The activity for which the exaction is being made must be impacted by the new development and the amount must be proportional. The bill creates cause of action for damages caused by unconstitutional exaction of property in this state. This is a codification of the US Supreme Court decision known as the "Koontz" case. Simply put: the Supreme Court stated it is unconstitutional to use the permit process as a tool of extortion, whether the government demands cash or land.

*(Note: SB 284 is expected to be amended to reflect HB 383)*

## **Growth Management**

SB 1424 by Sen. Evans (R-Milton)

HB 551 by Rep. Perry (R-Gainesville)

The FHBA supported bill requires local governments to address the protection of private property rights in the comprehensive plan. The private property rights element shall set forth strategies and guidelines to implement the following objectives:

- Consider the impact of private property rights of all development orders
- Encourage economic development
- Use of alternatives to achieve same results as the comprehensive plan
- Consider the harm of non-compliance





## **RESIDENTIAL PROPERTY ASSOCIATIONS**

Residential property associations are woven within the fabric of Florida living. They are most readily identified as Homeowners Associations or Condominium Associations. Legislative changes to resolve real or perceived issues should be pursued and not overly broad. Proposed solutions must be sensitive to maintaining a favorable environment for investment in real property.

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### **Estoppel Fees**

SB 736 by Sen. Stargel (R-Lakeland)

HB 611 by Rep. Wood (R-Winter Haven)

Buying a property governed by a homeowners association means the current owner must pay dues. During escrow, an estoppel letter from the HOA is requested by the seller. This legal document outlines information regarding the current owner's financial standing in regards to the HOA, what is due and what has not been paid. Too often these letters are not provided in a reasonable time frame and the HOA charges an exorbitant fee.

SB 736 and HB 611 reduce the amount of time an association has to deliver the estoppel letter from 15 to ten days. It also limits the basic fee for an estoppel letter to no more than \$100. However, additional fees are allowed. For example, additional fees may be imposed for requesting multiple letters in a 30-day period or simultaneously requesting a letter for multiple units.

## **Homeowners Associations**

**SB 1308 by Sen. Hays (R-Umatilla)**

**HB 1263 by Rep. La Rosa (R-St. Cloud)**

Any changes to Homeowners' Association laws must maintain a climate which encourages development of new communities. Lowering the percentage of lots sold to trigger required turnover of the association is not conducive to encouraging investments in new developments. Investors must maintain the ability to fully implement their vision upon which financing and marketing were developed. The FHBA believes the current trigger of 90% is appropriate. The Senate bill proposes lowering the turnover trigger.

The House bill proposes the collection of additional information by the Florida Department of Business and Professional Regulation. Obtaining this information will help better identify the real issues and therefore help future policymakers craft appropriate solutions which resolve real issues without being so broad as to discourage future investment.

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## **Condominium Bulk Buyer**

**SB 348 by Sen. Ring (D-Margate)**

**HB 791 by Rep. Moraitis (R-Ft. Lauderdale)**

During the economic downturn, policymakers needed to encourage investments in distressed condominiums. Allowing bulk buyers to purchase units without assuming all of the liability of a developer proved popular, successful changes to encourage investment in Florida's distressed properties. This provision requires an extension, which both the SB 348 and HB 791 provide. However, they also limit the ability of bulk buyers to modify key condominium elements, even if the bulk buyer would otherwise own enough units per the bylaws to effectuate such change. In many cases, changing these elements is required to make the condominium successful. As they are filed, SB 348 and HB 791 will discourage investments in distressed condominiums.





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