

MEMORANDUM

Agenda Item No. 11(A)(15)


TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution opposing HB 17, SB 1158, or similar legislation that would preempt local regulation of businesses, professions, occupations, commerce, trade, and labor, and nullify regulations adopted by local governments pertaining to such matters; and amending Resolution No. R-1217-16 to revise the Board's 2017 state legislative priorities to include this item

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



Abigail Price-Williams
County Attorney

APW/cp




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(Revised)

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(15)
3-7-17

RESOLUTION NO. _____

RESOLUTION OPPOSING HB 17, SB 1158, OR SIMILAR LEGISLATION THAT WOULD PREEMPT LOCAL REGULATION OF BUSINESSES, PROFESSIONS, OCCUPATIONS, COMMERCE, TRADE, AND LABOR, AND NULLIFY REGULATIONS ADOPTED BY LOCAL GOVERNMENTS PERTAINING TO SUCH MATTERS; AND AMENDING RESOLUTION NO. R-1217-16 TO REVISE THE BOARD'S 2017 STATE LEGISLATIVE PRIORITIES TO INCLUDE THIS ITEM

WHEREAS, Senate Bill 1158 and House Bill 17 have been filed for consideration during the Florida Legislature's 2017 session by Senator Kathleen Passidomo (R – Naples) and Representative Randy Fine (R – Palm Bay), respectively; and

WHEREAS, HB 17 would preempt the regulation of businesses, professions, and occupations to the state and prohibit local governments from adopting or imposing new regulations on businesses, professions, or occupations unless such regulations are expressly authorized by general law; and

WHEREAS, HB 17 would grandfather existing local government regulation of businesses, professions, and occupations adopted prior to July 1, 2017, without general law authority, but only until July 1, 2020 when such local government regulations would be null and void; and

WHEREAS, similarly, SB 1158 would preempt to the state the regulation of matters relating to commerce, trade, and labor, effective January 1, 2017; and

WHEREAS, while SB 1158 in its present form would not impact local government regulations enacted prior to January 1, 2017, it would prevent local governments from enacting new regulations pertaining to commerce, trade, or labor after that time; and

WHEREAS, SB 1158 declares that any such local regulations enacted after January 1, 2017 are null and void, and provides a process by which other local governments may seek to invalidate any offending regulations of a county, municipality, or special district; and

WHEREAS, HB 17 and SB 1158 could have far-reaching implications for the communities that local governments represent and protect through regulations pertaining to businesses, professions, occupations, commerce, trade, and labor; and

WHEREAS, under HB 17, a host of local regulations could potentially either be preempted to the state or cease to be enforceable by local governments after July 1, 2020; and

WHEREAS, a list of such local regulations is set forth in Exhibit A to this resolution, which was compiled by the Florida Association of Counties; and

WHEREAS, among these are local regulations pertaining to:

- adult entertainment and night club establishments, spacing between alcohol sales establishments and schools, religious facilities, and residences, and hours of operation for certain uses that operate near single family residences;
- minors, including those that prohibit the sale of tobacco products to persons under 18 years of age;
- consumer protection and unfair/deceptive trade practices, including regulations on false/misleading advertising, food product packaging/labeling, price misrepresentation, maximum non-consent tow rates, and non-discrimination in tipping;

- business licensing, including regulations for pain management clinics that require fingerprinting and background checks for the protection of the public;
- notice, disclosure, and signage requirements, including those relating to gasoline prices, rental car agencies, alcoholic beverages, check cashing fees;
- wage theft;
- the prevention of unreasonably loud noises;
- historic preservation, including regulations that preserve historic districts and draw tourism;
- art in public places for the benefit of the community;
- emergency vehicles, taxis, limousines, jitneys, and transportation network companies;
- commercial signage and signage on commercial buildings;
- placement and merchandising of tobacco products and e-cigarettes;
- anti-discrimination;
- labor and employment; and
- the environment, including regulations that prevent sanitary nuisances, such as untreated or improperly treated human waste, garbage, and dead animals; and

WHEREAS, SB 1158 takes a similarly broad sweep to HB 17 and provides that unless otherwise expressly authorized by special or general law, after January 1, 2017 local governments would be precluded from enacting regulations that:

- ban the sale of a good or service;
- impose a penalty on the sale of a good or service;
- require an employer to pay any or all of its employees a wage rate not otherwise required under a special, general, or federal law; or

- interfere with the regulation of commerce, trade, or labor outside the territorial boundaries of a local government, or that have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation within the county or outside its territorial boundaries; and

WHEREAS, under the language above, SB 1158 could potentially prevent local governments from enacting or amending regulations that encourage local and regional economic development, protect the distinguishing aesthetics and other features of local areas that attract tourists, and prevent discrimination; and

WHEREAS, although Representative Fine has expressed an intent to preserve local zoning authority, neither HB 17 nor SB 1158 expressly preserves local zoning authority or provides a basis to determine when a local government is properly exercising its local zoning authority; and

WHEREAS, local zoning authority is a fundamental power through which local communities regulate where industrial, commercial, residential, and other uses should be located to protect the character of neighborhoods and ensure that incompatible uses are not situated adjacent to one another; and

WHEREAS, many believe that local government regulations serve no useful purpose and are simply revenue generators for local governments that act to the detriment of businesses; and

WHEREAS, in reality, such regulations are essential to preserving the quality of life and character of local communities, and are in many cases actually good for businesses; and

WHEREAS, for example, as environmental regulations have come into place, businesses have begun to market themselves as “green enterprises,” using their compliance with such regulations as a means to attract clients and customers; and

WHEREAS, sectors of Florida’s diverse economy are located in different geographic regions throughout the state with different sectors and different geographic regions requiring different business climates under which Florida’s industries may thrive; and

WHEREAS, promoting a one-size-fits-all policy of business regulations and preventing local governments from enacting innovative solutions for promoting local Florida industries that thrive in particular regions will hamper, rather than help, Florida’s economic development and job creation; and

WHEREAS, the ability to regulate in the areas identified above is essential for local governments across the state to ensure that each may address the issues and problems particular to their communities and ensure the well-being of their residents; and

WHEREAS, residents of local communities – including business owners – are supportive of such regulations, which have been put in place by their elective representatives on county and city commissions; and

WHEREAS, by preempting local government regulation of businesses, professions, occupations, commerce, trade, and labor, these bills act contrary to the will of local communities; and

WHEREAS, although the bills provide a carve-out for local regulations that have been authorized by general law, local governments are better situated than the Legislature to quickly respond to the needs of local communities as they arise; and

WHEREAS, the Legislature is in regular session only 60 days per year and therefore cannot address local needs as responsively as local governments can, especially in a state as large and diverse as Florida; and

WHEREAS, accordingly, this Board wishes to oppose these bills,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Opposes HB 17, SB 1158, or similar legislation that would preempt local regulation of businesses, professions, occupations, commerce, trade, and labor; and nullify regulations adopted by local governments pertaining to such matters.

Section 2. Waives the requirements of Resolution No. R-764-13 and amends Resolution No. R-1217-16 to include this issue as an additional state legislative priority for the 2017 session.

Section 3. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, the Senate President, the House Speaker, Senator Kathleen Passidomo, Representative Randy Fine, the Chair and Members of the Miami-Dade State Legislative Delegation, and the President and Executive Director of the Florida Association of Counties.

Section 4. Directs the County's state lobbyists to advocate against the legislation described in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2017 State Legislature Package to include this item as a priority.

The Prime Sponsor of the foregoing resolution is Commissioner Jose "Pepe" Diaz. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- | | |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of March, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

James Eddie Kirtley



WHAT A TYPICAL FLORIDA COUNTY REGULATES:

UNDER HB 17 THESE ITEMS COULD EITHER BE PREEMPTED TO THE STATE OR EXPIRE IN 2020 IF ALREADY AUTHORIZED BY LOCAL GOVERNMENT

- Hours of sale for businesses that sell alcohol and closing hours for “bottle clubs”
- Local building standards except that most professions seems to have a general law authorization for more restrictive measures for professionals (engineers, contractors, etc.) in the Florida Statutes
- Cable Television franchises and companies
- Home occupations
- Licensing of commercial applicators for fertilizer
- Noise ordinance (technically affects regulation of businesses if their endeavor creates noise above the allowed levels)
- Permits for disposal of sludge, septage and wastewater residuals
- Signage on commercial buildings
- Fireworks sales
- Conduct of special events (concerts, festivals, carnivals, etc.)
- Dogs in outdoor portions of food service establishments
- Regulations on placement and merchandising of tobacco products and e-cigarettes
- Local business tax receipts
- Adult entertainment establishments
- Night Clubs
- Dealers in scrap metal and secondhand goods / auto track machinery salvage yards
- Bingo ordinance
- Regulations of Pain Management Clinics
- Motion Photography Production and permits associated with it
- News racks
- Junkyards businesses
- Franchises for commercial solid waste
- Towing companies
- Traffic education programs
- Businesses/occupations that are currently regulated by local ordinance:
 - Bed and breakfasts
 - Big box retail
 - Campgrounds and RV Parks
 - Dynamite/explosives storage
 - Temporary offices
 - Convenience retails with fuel pumps
 - Daycare
 - Flea markets

- Food trucks
- Fat rendering plants
- Golf driving ranges
- Marinas and docking facilities
- Petroleum, gasoline and lubricating oil storage
- Private airports/heliports
- Race tracks
- Rifle Range
- Rock quarries
- Restaurants with drive thru
- Self-serve ice buildings
- Service stations
- Slaughterhouses
- Special events
- Storage facilities
- Ticket sales
- Vehicle repair in non-residential districts
- Veterinary clinic
- Zoo
- Landfills / garbage & waste dumps
- Incinerators
- Pain management clinics
- Renewable energy companies
- Private schools
- Nursing homes / Rehab center / medical facilities
- Slaughter houses and packing houses
- Green houses/nurseries
- Hunting and fishing camps
- Commercial kennels/stables
- Possible environmental regulation impacts to prevent sanitary nuisances:
 - Untreated or improperly treated human waste, garbage, dead animals;
 - Improperly built septic tanks, water closets or privies;
 - Discharge of septic tank pup-put wastes into streams, surface waters or underground aquifers;
 - Supplying potable water without disinfection;
 - Air pollution, water pollution;
 - Ground pollution
- Prevent enforcement of:
 - Minors in strip clubs
 - Spacing between schools/churches & alcohol sales

- Limitation of hours of operation for certain uses that operate near single family homes
- Alcohol consumption