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March 19, 2020 **ELECTRONIC MAIL**

The Honorable Ron DeSantis
Governor of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

First, thank you for your leadership safeguarding the people of Florida throughout the ongoing COVID-19 emergency. We are confident that the strong partnership between state and local agencies will protect the State and its citizens from the challenges that lie ahead.

We write to bring your attention to legislation passed this session that we believe undermines that partnership, CS/CS/SB 410 Growth Management. On behalf of Florida's 67 counties, we respectfully request that you exercise the authority granted by Art. III, § 8 of the Florida Constitution to withhold your approval and veto this bill. While we do not believe that SB 410 is based upon sound public policy, the process by which it came to be adopted is also of significant concern. Complicated last-minute amendments made substantial changes to the bill, changes which were insufficiently vetted, and which will result in unforeseen and unforeseeable consequences. Furthermore, we believe that its hasty passage resulted in a bill that violates the substantive and procedural constraints placed on the Legislature by the Florida Constitution. Simply put, this law is clearly unconstitutional. Unless vetoed, SB 410 will likely be contested by adversely affected charter counties, leading to needless and costly litigation expenses for both the state and the counties.

Florida's citizens place their trust in local government to protect our state's valuable environmental resources and to foster strong communities, but local representatives cannot be successful without the support of our state counterparts. The gradual erosion of county growth management authority by the Legislature impedes the ability of local officials to effectively plan and fund vital government functions. Unfortunately, SB 410 will create significant challenges to local officials' efforts to manage development within their communities.

Growth management has been a responsibility of local governments since Florida passed the landmark Growth Management Act of 1986. Local comprehensive plans are required to anticipate the capital improvements and services needed to support future development allowed pursuant to the jurisdictions' future land map and land development regulations.

Comprehensive plans set forth the framework for local infrastructure funding decisions for a variety of capital improvements, including but not limited to, wastewater and stormwater management systems, transportation networks, and solid waste facilities. Those plans also guide local officials as we coordinate vital environmental funding with our state and federal partners; funds which are allocated years in advance of a project's construction based on these long-term plans. By undermining the local planning processes, SB 410 makes planning and coordination more difficult for all agencies working to serve Floridians.

Comprehensive plans have been in place for decades and are required to be periodically evaluated by local stakeholders, officials, and state agencies. Amendments are considered at multiple public hearings and are subject to state review. Likewise, implementing ordinances are required to be reviewed by the local land planning agency and adopted by the governing body after consideration at public meetings. Charter amendments undergo an even more thorough public review process and are adopted by voter referendum. These processes result in localized development plans that reflect the needs and values of each community and take into consideration local environmental resources.

By contrast, Section 1 of SB 410, the newly adopted provisions of Sec. 163.3167 (11), Fla. Stat. was originally filed as part of a strike-all amendment to SB 410 on February 28 and received its only public hearing in the Senate Rules committee on March 2. It was subsequently passed off the House floor on March 11; and finally passed by the Senate on March 12. The language preempting locally adopted charters and comprehensive plans was passed in 10 days, with only one public hearing. The Legislature's cursory and hasty consideration of this far-reaching section stands to supersede decades of local policy supported by considerable community engagement and local knowledge.

The Florida Constitution expressly requires county charters, adopted by voter referendum, determine whether the county or municipal law prevails in the event of a conflict. SB 410 attempts to eliminate that requirement and, in doing so, runs afoul of the constitutional constraints placed on the power of the Legislature.

In 2004, the voters in Seminole County adopted the Rural Boundary into their Charter to establish and protect the rural character of an area of the County. As amended, the County Charter provided that the provisions of the County's comprehensive plan and land development regulations would apply within the area even if that area was subsequently annexed into the municipal boundaries. The vote of the electorate was a clear recognition of the need to protect and preserve the rural character of that area of the County. Though the Charter amendment was challenged, it was upheld by the Court. In upholding

the Charter amendment's preemption of municipal ordinances, the Fifth District Court of Appeals held that "The most significant feature of charter counties is the direct constitutional grant of broad powers of self-government, which include local citizens' power to enable their charter county to enact regulations of county-wide effect which preempt conflicting municipal ordinances." Seminole County v. City of Winter Springs, 935 So. 2d 521 (Fla. 5th DCA 2006) *citing* Art. VIII, § 1(g), Florida Constitution (1968). SB 410 deprives local citizens of those powers of self-government.

SB 410 exempts charter provisions in charter counties with a population over 750,000 (Miami-Dade, Broward, Palm Beach, Hillsborough, Orange, Pinellas, and Duval counties), allowing the decisions of the voters in the state's seven most populous counties to remain valid. However, SB 410 deprives the voters of the thirteen mid- to small charter counties from determining whether county or municipal ordinances should control in the event of a conflict. If SB 410 becomes law, the voters of Lee, Polk, Brevard, Volusia, Seminole, Sarasota, Osceola, Leon, Alachua, Clay, Charlotte, Columbia, and Wakulla will be deprived of the benefit of "the most significant feature of charter counties": the right to determine by charter which government they wish to vest with preemptive regulatory power. Several of these charters currently include provisions applying certain land development regulations county-wide. A third county, Alachua, is considering similar provisions. All charters are instilled with certain privileges under Florida's constitution and charters adopted by the citizens of smaller counties are entitled to the same protection under the constitution as those adopted by more populous counties. SB 410 arbitrarily discriminates against less populous counties and those citizens should not have to bear the cost of litigation to uphold the essential rule of law of the State of Florida.

Section 4 of SB 410 requires each local government to adopt a new element into its comprehensive plan and creates a constitutionally impermissible unfunded mandate under Art. VII, § 18, Florida Constitution (1968).

Throughout the process of adopting this new mandate, legislators argued that the cost of drafting, approving, and adopting a new comprehensive plan element would be insignificant to local governments. Though prudently, at the eleventh hour, an amendment was added on the House floor to include the so-called "important state interest" language required to force an unfunded mandate on local governments — hedging against the likelihood that that cost to local government would, in fact, be more than "insignificant."

The process to adopt new comprehensive plan policies, though streamlined in 2011, still requires multiple public hearings, notice, and state review. Comprehensive plans are intentionally collaborative regulatory

documents, and the adoption process does not lend itself to "cut and paste" public policy. The Constitution obligates the Legislature to follow certain processes to impose mandates on local governments, none of which were followed in this case. The unfunded mandates provision would have been satisfied if the Legislature had appropriated sufficient funds to offset the local cost of implementation. Alternatively, the proponents of the bill could have convinced 2/3 of each chamber of the Legislature that this mandate was sufficiently important to override the unfunded mandate protection. The bill passed the House with a final vote of 71 yeas to 43 nays and the Senate with a vote of 23 yeas to 16 nays. Neither chamber mustered the 2/3 vote required to constitutionally impose an unfunded mandate. The purpose of the unfunded mandates provision is to ensure that the Legislature considers the significance of the action and the cost it intends to pass on to local taxpayers. The Legislature knowingly failed to meet its constitutional burden; the taxpayers should not be forced to fund the cost of litigation to hold their elected officials accountable for its failure to comply with a straightforward constitutional procedure.

Florida's counties do not take our responsibility to protect the state's environmental resources lightly and we expend significant public resources to make sure that our decisions receive extensive public scrutiny. Voter-adopted charter amendments should especially be afforded the full protection of the Constitution. The legislative process failed to protect the rights granted the citizens of the state of Florida, attempting to take away the rights granted the voters in charter counties and local taxpayers' protection against unfunded mandates. For those reasons, we respectfully request that you withhold your approval and veto CS/CS SB 410.

For further information please contact Laura Youmans, Legislative Counsel, at lyoumans@fl-counties.com or Davin Suggs, Director of Public Policy, at dsuggs@fl-counties.com.

Respectfully,

Nick Maddox
President, Florida Association of Counties