FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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March 25, 2022

The Honorable Ron DeSantis
Governor of Florida
The Capitol
Tallahassee, FL 32399-0001

Re: SB 620 - Local Business Protection Act

Dear Governor DeSantis:

This is to respectfully request that you exercise the authority granted the Governor by the Florida Constitution to withhold your approval and veto Senate Bill 620.

By way of background, the Florida Stormwater Association (FSA) is a non-profit professional association whose interests are centered on the effective implementation of stormwater management permitting and water quality protection programs in Florida. Our membership is primarily composed of local governments that must obtain and comply with federal stormwater discharge permits pursuant to the Clean Water Act as administered by the Florida Department of Environmental Protection, and private consulting engineering firms that are engaged by such local governments. We have been actively involved in the development of Florida water policy for almost 30 years.

Generally, SB 620 provides a new mechanism for private, for-profit businesses to seek to recover damages related to local government actions in certain circumstances. This is in addition to all of the other mechanisms available to the private sector to address perceived grievances in front of city and county governments, including those available through the exercise of our rights to vote and influence the outcome of political processes at the local level.

There are several exceptions to this policy in the legislation, and the efficacy of those exceptions as relates to water quality and flood protection programs is the subject of this letter. We would like to focus on only one of the exemptions, as contained in the legislation's proposed subsection 70.91(2)(c)(1.), FS, beginning on line 80 of the legislation:

> (c) A county or municipality is not liable for business damages caused by:
> 1. An ordinance or charter provision that is required to comply with, or is expressly authorized by, state or federal law;

Elliot Shoberg, PE, *President*, City of Clearwater
Elizabeth Perez, PE, *Vice President*, Collective Water Resources
Shane Williams, PhD, PE, *Secretary-Treasurer*, Alachua County
Danielle Hopkins, CMP, *Executive Director*

Our concern centers on the many types of ordinances that a city or county may enact in furtherance of permit conditions or to protect or improve water quality that are not (specifically) *required to comply with* or *expressly authorized by* state or federal law, yet are necessary to further the goals of such programs or to comply with implementing regulations adopted by state or federal agencies.

By way of contrasting examples, stormwater utility fees, a commonly used mechanism to fund part of the costs associated with water quality improvement or flood control programs, are *expressly authorized* by Section 403.0893, FS. But ordinances designed to protect seagrass beds that preserve habitat and improve water quality are not *required to comply with* or *expressly authorized* by state or federal regulations or law.

Many actions taken by local governments are necessary to further water quality improvement or flood control programs, or to comply with permit conditions, but are not specifically required to comply with or expressly authorized by state or federal law. For example:

1. Total Maximum Daily Loads/State Water Quality Standards – At the state level, Florida's Total Maximum Daily Loads (TMDL) and related state water quality improvement programs are embedded in statute and establish timelines for the development of implementation programs through the Basin Management Action Plan (BMAP) program. Florida's TMDL and BMAP programs have their origins in the federal Clean Water Act.

   But at the local level, a specific implementation strategy or approach in response to an FDEP regulation or directive is not expressly authorized by law and one particular implementation technique versus another, or the level or frequency with which a strategy is taken, is not specifically required by law.

   For example, ordinances regulating the types of septic tanks that must be used in certain watersheds or establishing the distance the septic system must be from a nutrient impaired water. Likewise, local programs prohibiting the use of septic systems and requiring connections to central sewer are not specifically required or expressly authorized by law.

2. Community Rating System - The Community Rating System (CRS) is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the National Flood Insurance Program (NFIP). In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community's efforts that address the goals of the program to reduce or avoid flood damage to property and to foster comprehensive floodplain management. Participation in the CRS program is voluntary and the actions taken by local governments to achieve improved ratings for their communities are not *required* or *expressly authorized* by state or federal law.

This lack of clarity in terms of the true effects of the legislation have a chilling effect on local water quality protection and permitting programs at a time when the policy of the State should be to encourage and strengthen such efforts, as opposed to adopting measures that impede or hamstring those measures. These water quality protections are critical given the environmental degradation that has been occurring statewide including red tide events, blue-green algae blooms, and seagrass die off.

Local programs are intended to prevent pollution and protect property owners and the environment. If these programs and regulations were to go away, then local (and state) governments are forced to deal with cleaning up after the degradation has occurred, which is always significantly more expensive than the cost of prevention. Further, the cost of defending lawsuits brought by a business entity challenging water quality improvement efforts will be borne by all taxpayers of the jurisdiction, which seems fundamentally unfair and unwise.

We have not heard of a specific example of a problem that SB 620 is intended to address or correct in the area of water policy but we have heard that the exemptions contained in the legislation will address any concerns that local governments may have. If so, the legislation in its current form seems to be one that is a solution in search of a problem and an example of an unwise approach to setting policy.

The challenges in protecting Florida's surface and groundwater are significant. Local water quality protection and improvement programs are the "frontlines" in the effort to keep Florida an attractive place to visit and live. Please do not allow yet another roadblock to improved flood protection and water quality programs to be enacted into law.

For these reasons, we urge you to withhold approval and veto SB 620.

Sincerely,

FLORIDA STORMWATER ASSOCIATION

Danielle Hopkins