

An Analysis of SB 250: Natural Emergencies

As Passed by the 2023 Florida Legislature

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What led to SB 250?

In September and November of 2022, Florida was hit with historic hurricanes. Hurricane Ian and Hurricane Nicole left many counties and cities severely flooded and damaged. The state Legislature responded with a bill, SB 250, that supporters said would help Florida not only recover structurally and financially in the wake of these natural disasters but also be better prepared for future ones. While 1000 Friends of Florida considered many of the provisions in the bill to be beneficial, we opposed provisions that would preempt local governments' planning authority.

SB 250 Summary

SB 250 makes various changes throughout Florida Statutes regarding the preparation and response activities of state and local governments when natural emergencies impact the state. Notably, the bill restricts the ability of counties and cities to control construction and development in their backyard, not only prospectively but also retrospectively. The amendments also require local governments to plan more extensively for natural disasters and encourages them to better help individuals dealing with the toll of these disasters. Four of the amendment's provisions expire in varying years, including 2024, 2025, and 2038.

SB 250 Summaries by Topic

Division of Emergency Management

Section 3

252.35 Emergency Management Powers; Division of Emergency Management – provides new standards and duties the Division of Emergency Management is responsible for carrying out.

Section 15

823.11 Derelict Vessels; Relocation or Removal; Penalty – provides guidelines on how to handle a derelict vessel for the Division of Emergency Management.

New Restrictions on Local Governments

Section 1/2

125.023/166.0335 Temporary Shelter Prohibition – defines “temporary shelter,” and states that where a permanent residential structure is left uninhabitable after a state of emergency is issued, a county/city may not prohibit the placement of a temporary shelter prohibition in its place for 36 months if certain criteria are met.

The information provided in this report does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this site are for general informational purposes only.

SB 250 Summaries by Topic *continued*

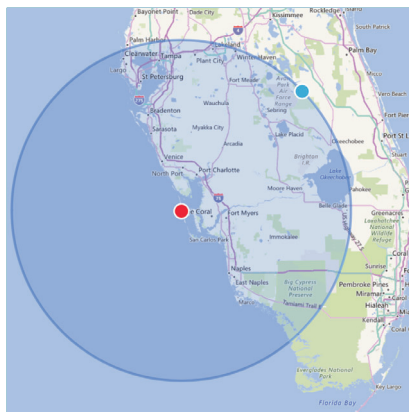
Section 13

553.80 Enforcement – restricts local governments in the Federal Emergency Management Agency disaster declaration for Hurricane Ian or Nicole from raising building inspection fees before October 1, 2024. This section expires June 30, 2025.

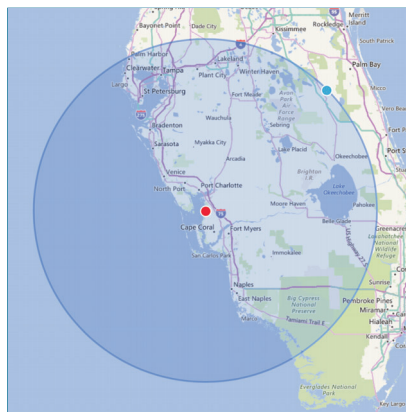
Section 14

Cities and counties within 100 miles of where either Hurricane Ian or Nicole (Hurricanes) made landfall* cannot (1) impose any stop on construction of property damaged by the Hurricanes, (2) impose more restrictive or burdensome amendments to its comprehensive plan or land development regulations, or (3) impose more restrictive or burdensome procedures around site plans and development before October 1, 2024. However, an amendment or development may be implemented if it meets certain criteria provided in the section. This section applies retroactively to September 28, 2022. This section expires June 30, 2025.

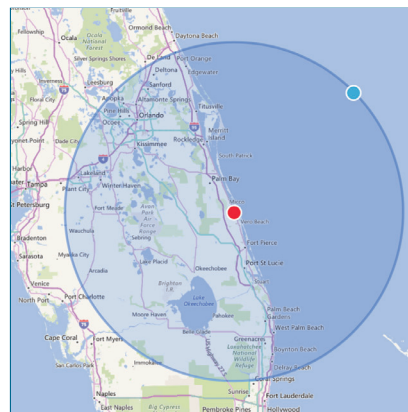
**Below are maps of three points the hurricanes made landfall in Florida and their 100-mile radii. Depending on how strictly the Legislature chooses to enforce this section, cities and counties on the edge of the radii could still be affected by section 14.*



Landfall: Cayo Costa, FL



Landfall: Pirate Harbor, FL



Landfall: Vero Beach, FL

Tool to see if your county or city falls within the radius: <https://www.calcmaps.com/map-radius/>

Extensions

Section 4

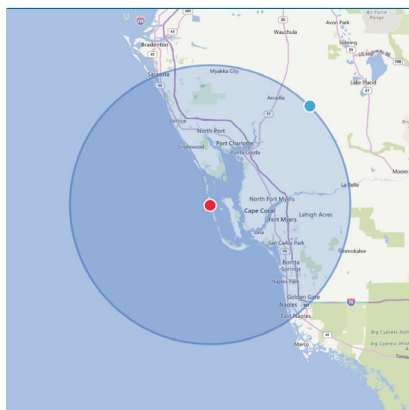
252.363 Tolling and Extension of Permits and other Authorizations – extends and caps the period to exercise the rights under a permit or other authorization in the event of a natural disaster(s). This section applies retroactively to September 28, 2022.

SB 250 Summaries by Topic *continued*

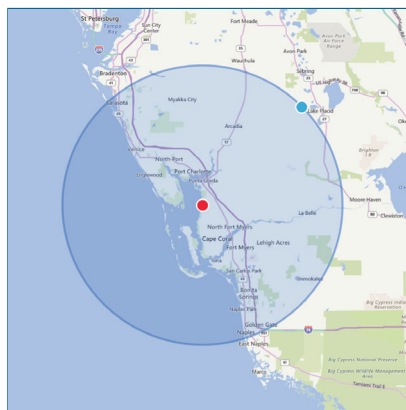
Section 18

This section provides an extension for any independent special fire control district within 50 miles of where Hurricane Ian or Nicole made landfall* required to submit its final report by July 1, 2023, to January 1, 2024.

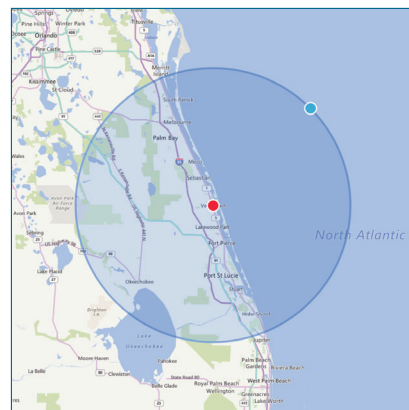
**Below are maps of three points the Hurricanes made landfall in Florida and their 50-mile radii. Depending on how strictly the Legislature chooses to enforce this section, cities and counties on the edge of the radii could still be affected by section 18.*



Landfall: Cayo Costa, FL



Landfall: Pirate Harbor, FL



Landfall: Vero Beach, FL

New Burdens on Local Governments

Section 5

252.391 Emergency Financial Plans – defines “local government entity,” and encourages these entities to develop emergency financial plans for major natural disasters that follow this section’s guidelines.

Section 6

252.40 Mutual Aid Arrangements – allows local governments to create teams to deal with expedited permits for temporary housing needs after a natural disaster. This section encourages local governments to provide temporary accommodations for those tasked with aiding hurricane recovery efforts. This section also encourages local governments to create agreements with other jurisdictions to provide services during states of emergency.

Section 7

287.055 Acquisition of Professional Architectural Services – expands the term “continuing contract,” in relation to Hurricane Ian until December 31, 2023.

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SB 250 Summaries by Topic *continued*

Section 8

The amendment to 287.055's term, "continuing contract," expires January 1, 2024.

Section 12

553.7922 Local Government Expedited Approval of Certain Permits – requires local governments impacted by natural emergencies to expedite the issuance of certain permits and allows them to waive applicant fees associated with expediting.

Public Utility

Section 10

366.98 Public Utility Liability Arising out of Emergencies and Disasters – removes liability for public utilities.

New Restrictions on Non-Governmental Groups

Section 11

489.117 Registration; Specialty Contractors – restricts registered contractors during a state of emergency and provides guidelines for discipline if restrictions are not followed.

Funds

Section 9

288.066 Local Government Emergency Revolving Bridge Loan Program – expands the program's reasons for providing financial aid to local government from solely Hurricane Ian and Nicole to federally declared disasters. This amendment also extends the possible term of the loan and adds guidelines for loan applications. The expiration of this section is also extended to July 1, 2038.

Section 16

This section states that nonrecurring funds will be appropriated to the Division of Emergency Management to fund the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program.

Section 17

This section states that nonrecurring funds will be appropriated to the Economic Development Trust Fund of the Development of Economic Opportunity to fund the Local Government Emergency Revolving Bridge Loan Program.

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Fiscal Impact

The Florida Senate's Fiscal Impact Statement claims SB 250 will likely have an insignificant negative fiscal impact on local governments. The statement attributes this to many of the provisions being permissive rather than mandatory. Below are some provisions that could have a fiscal impact.

Provisions that could have a negative fiscal impact on local governments:

- Sections 3 and 15 provide new guidelines and responsibilities the Division of Emergency Management are expected to meet and perform.
- Section 5 encourages local governments to develop emergency financial plans for major natural disasters.
- Section 6 encourages local governments to provide temporary accommodations for those tasked with aiding hurricane recovery efforts and to create agreements with other jurisdictions to provide services during states of emergency.
- Section 7 expands the term "continuing contract," to include more projects.
- Section 12 requires local governments impacted by natural emergencies to expedite the issuance of certain permits and allows them to waive fees associated with expediting.
- Section 13 prevents local governments from raising building inspection fees.
- Section 14 prohibits local governments from enacting restrictions or burdens on developments ordered since September 28, 2022, until October 1, 2024.

Provisions that could have a positive fiscal impact on the private sector:

- Section 4 retroactively extends the period to exercise the rights under a permit or other authorization in the event of a natural disaster(s).
- Section 7 allows entities to enter into larger contracts for Hurricane Ian relief projects under a continuing contract.
- Section 12 requires local governments impacted by natural emergencies to expedite the issuance of certain permits and allows them to waive fees associated with expediting.
- Section 14 prohibits local government from enacting restrictions or burdens on development ordered since September 28, 2022, until October 1, 2024.

Provisions that provide funds to local governments:

- Section 16 and 17 of SB 250 appropriate \$11 million and \$50 million, respectively, to aid local governments.

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Legality of SB 250's modification of contracts

Fla. Stat. § 163.3241 – If state or federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms of a development agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.

Avenue to sue

Fla. Stat § 163.3243 – Any party or aggrieved or adversely affected person as defined in s. 163.3215(2) may file an action for injunctive relief in the circuit court where the local government is located to enforce the terms of a development agreement or to challenge compliance of the agreement with ss. 163.3220-163.3243.

Legality of Retroactive Provisions

SB 250 expressly states a legislative intent to apply sections 4 and 14 retroactively.

What to understand about retroactive application

The Florida Constitution Article I Section 10 states, “[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” The Supreme Court of Florida held that, for a statute to unconstitutionally impair the obligation of contracts, “the statute must have the effect of changing the substantive rights of the parties to existing contracts.” *Manning v. Travelers Ins. Co.*, 250 So. 2d 872, 874 (Fla. 1971). Substantive changes “prescribe duties and rights,” while procedural changes “concern the means and methods to apply and enforce those duties and rights.” *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994) (citing *Benyard v. Wainwright*, 322 So.2d 473, 475 (Fla.1975)). A presumption against retroactivity attaches to substantive changes unless there is an express statement of legislative intent for the statute to apply retroactively. *Metro. Dade Cnty. v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 500 (Fla. 1999).

In *Menendez v. Progressive Exp. Ins. Co, Inc.*, the Florida Supreme Court created a two-pronged test to determine whether a substantive statute may be applied retroactively: “(1) whether—and to what extent—the Legislature intended for the statute to apply retroactively, and (2) if intent is clearly expressed, whether retroactive application would violate constitutional principles.” 35 So. 3d 873, 877 (Fla. 2010). The Court stated that even when there is an express intent to apply a law retroactively, it is unconstitutional to retroactively apply a new law that

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Legality of Retroactive Provisions *continued*

“impairs a vested right, creates a new obligation, or imposes a new penalty. *Id.* The Court held that if “retroactive application of the statute attaches new legal consequences to events completed before its enactment,” it is impermissible to retroactively apply the new statute. *Id.* (citing the US Supreme Court decision in *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270, 114 S.Ct. 1483, 128 L.Ed.2d229 (1994)).

Where a statute “was not in effect at the time of contracting, it cannot be retroactively applied to alter the obligations of that contract.” *Hausler v. State Farm Mut. Auto. Ins. Co.*, 374 So. 2d 1037, 1038 (Fla. Dist. Ct. App. 1979) (citing the Florida Supreme Court decision in *Dewberry v. Auto-Owners Ins. Co.*, 363 So. 2d 1077 (Fla. 1978)). Even if the act that “triggers the obligation occurs after the statute is enacted,” retroactive application of the statute that alters obligations of the contract is unconstitutional. *Id.* In *Cohn v. Grand Condo. Ass’n, Inc.*, a condominium’s various contract papers provided the voting guidelines for the board of directors. 62 So. 3d 1120, 1121 (Fla. 2011). A statute was then enacted that established different voting guidelines for the board of directors. *Id.* Over ten years later, the Legislature amended the statute to make it retroactive. *Id.* The condo then filed a declaratory judgment action “seeking a declaration that [the amendment] constituted an unconstitutional impairment of contract as applied to [the condo].” *Id.* The condo’s papers were in line with the Condominium Act of the State of Florida and did not contain the phrasing “as amended from time to time.” *Id.* Without this express agreement by parties, the condo was not subjected to future statutory changes. *Id.* The Court held that the amendment impaired the obligations of contract as applied to the condo, and was therefore unconstitutional. *Id.* at 1122.

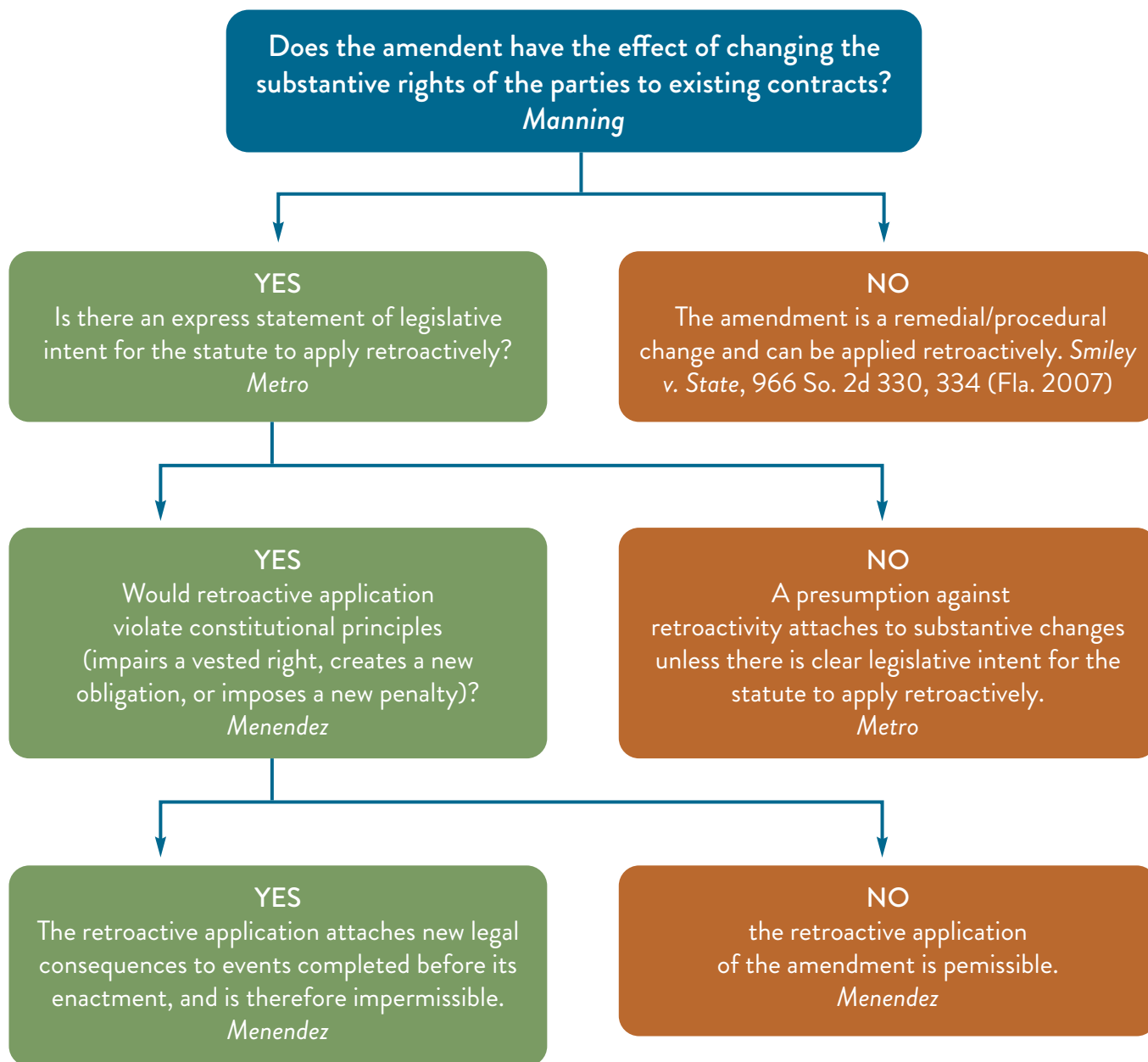
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SB 250: Natural Emergencies

Legality of Retroactive Provisions *continued*

Application of SB 250

To determine the constitutionality of the retroactive application of SB 250's sections 4 and 14, consider the following.





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