

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 420

INTRODUCER: Community Affairs Committee and Senator Yarborough

SUBJECT: Official Actions of Local Governments

DATE: March 31, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 420 prohibits counties and municipalities from funding, promoting, or taking official actions such as adopting ordinances, resolutions, rules, regulations, programs, or policies, related to diversity, equity, and inclusion. A county or municipality may not expend any funds, regardless of the source, or establish, support, sustain, or staff a diversity, equity, and inclusion office or officer.

The bill provides that a member of a county or municipal governing body who violates the prohibitions commits misfeasance or malfeasance in office. An action in circuit court may be brought against a county or municipality that violates the bill's provisions; the court may enter judgment awarding declaratory and injunctive relief, damages, costs, and reasonable attorney fees to a prevailing plaintiff, but not to a prevailing county or municipality. The bill does not prohibit official action required for compliance with general or federal law or regulation.

Further, the bill requires any potential recipient of a county or municipal contract or grant to certify before such award that they do not and will not use local government funds to require employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed using materials related to diversity, equity, and inclusion.

The bill takes effect December 31, 2025.

II. Present Situation:

Unlawful Discrimination in Florida

In 2019, Governor DeSantis reaffirmed the policy of non-discrimination in government employment and declared it the policy of his administration to prohibit discrimination in employment based on age, sex, race, color, religion, national origin, marital status, or disability.¹

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) of 1992 protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.² The FCRA establishes the Florida Commission on Human Relations (the Commission) within the Department of Management Services.³

The Commission is empowered to receive, initiate, investigate, conciliate, hold hearings, and act upon complaints alleging discriminatory practices.⁴ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 per violation, and other appropriate relief.⁵

Local Ordinances

The governing body of a county or municipality has broad legislative powers to enact ordinances, local laws, to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government's residents. Ordinances address a wide variety of local issues, from government structure and zoning laws to speed limits and noise ordinances. Procedures for passing local ordinances are prescribed by the Legislature and differ only slightly between counties and municipalities.

Local Government Authority

The Florida Constitution grants local governments broad authority to take actions furthering citizens' health, welfare, safety, and quality of life. This "home rule" authority includes legislative powers to enact local laws. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁶ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.⁷ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to

¹ Office of the Governor, *Executive Order Number 19-10*, Jan. 8, 2019 (Reaffirming Commitment to Diversity in Government).

² Section 760.01, F.S.

³ Sections 760.03 and 760.04, F.S.

⁴ Section 760.06(5), F.S.

⁵ Section 760.021(1), F.S.

⁶ FLA. CONST. art. VIII, s. 1(f).

⁷ FLA. CONST. art. VIII, s. 1(g).

conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.⁸

This authority, under the umbrella of governmental or municipal purpose, extends broadly to any ordinance necessary to promote the health, welfare, safety, and quality of life of a local government's residents.⁹ Local governments' authority has been liberally construed when reviewed by courts. For example, courts have found the following to meet the standards for what constitutes a "municipal purpose," and therefore were valid local government actions:

- Acquisition and maintenance of a golf course;¹⁰
- Sale of souvenir photographs;¹¹ and
- Prohibiting the rental of motorized scooters.¹²

In general, this broad home rule authority is limited by two guideposts: preemption, where a higher level of government such as the state has already legislated on a topic, and standards of reasonableness. Local governments may not pass ordinances which are apparently arbitrary or unreasonable, despite their wide-ranging powers.¹³ Anyone affected by an ordinance may challenge its validity in court by filing a civil action against the local government.¹⁴

Preemption

An ordinance can be declared invalid on the grounds that it is inconsistent with the State Constitution or Florida Statutes. Inconsistency may be found where a local ordinance is either preempted by or in conflict with the State Constitution or Florida Statutes.¹⁵ Preemption means that a local government is precluded from exercising authority in a particular area, while conflict exists where a municipality has the right to act but such action frustrates the purpose of the state regulation.¹⁶ Express preemption refers to instances where the Legislature has directly written into law that the state intends to occupy a field of law, prohibiting local governments from taking action in that field.¹⁷

Malfeasance or Misfeasance in Office

Misfeasance has been described broadly as a "misdeed or trespass" while malfeasance has been described as a "wrongful, unlawful, or dishonest act."¹⁸

⁸ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁹ Art. VIII, § 2(b), Fla. Const.; Section 125.86, F.S.; for municipalities see *Quiles v. City of Boynton Beach*, 802 So. 2d 397, 398 (Fla. 4th DCA 2001); § 166.021, Fla. Stat.

¹⁰ *West v. Town of Lake Placid*, 97 Fla. 127, 120 So. 361 (1929).

¹¹ *City of Winter Park v. Montesi*, 448 So. 2d 1242 (Fla. 5th DCA 1984).

¹² *Classy Cycles, Inc. v. Panama City Beach*, 301 So. 3d 1046 (Fla. 1st DCA 2019).

¹³ *Dennis v. City of Key West*, 381 So. 2d 312 (Fla. 3d DCA 1980).

¹⁴ *Hardage v. City of Jacksonville Beach*, 399 So. 2d 1077 (Fla. 1 DCA 1981). There are statutory requirements for being allowed to bring suit in certain cases, such as those based on a technical deficiency in the ordinance, but the cases at issue in this analysis merely require being affected.

¹⁵ *City of Jacksonville v. American Environmental Services Inc.*, 699 So. 2d 255 (Fla. 1st DCA 1997).

¹⁶ *Id.*

¹⁷ *See, e.g.*, s. 790.33, F.S. "... the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition..."

¹⁸ BLACK'S LAW DICTIONARY (12th ed. 2024).

Under Article IV, s. 7 of the State Constitution, the Governor is authorized to suspend from office by executive order any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony. The Governor may temporarily appoint someone to fill the office during the suspension and may choose to reinstate the suspended officer.¹⁹ The Senate has the authority to remove from office or reinstate the suspended officer in proceedings prescribed by law and may convene a special session for such purpose.²⁰

In reference to municipal officers, the State Constitution only authorizes the Governor to suspend municipal officers indicted for crime, unless such power is vested in law or a municipal charter.²¹ Section 112.51, F.S., provides that the Governor may by executive order suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties. The Governor may temporarily fill the office during the suspension.²² If the municipal officer is convicted of any of the charges contained in the indictment or information by reason of which he or she was suspended, the Governor must remove the official from office.²³ If the municipal official is acquitted, found not guilty, or otherwise cleared of the charges, the Governor must revoke the suspension.²⁴

III. Effect of Proposed Changes:

Sections 1 and 2 create ss. 125.595 and 166.04971, F.S., to prohibit counties and municipalities, respectively, from funding, promoting, or taking official actions, such as adopting or enforcing ordinances, resolutions, rules, regulations, programs, or policies, related to diversity, equity, and inclusion. A county or municipality may not expend any funds, regardless of the source, or establish, support, sustain, or staff a diversity, equity, and inclusion office or officer.

“Diversity, equity, and inclusion” (DEI) is defined as any effort to:

- Manipulate or otherwise influence the composition of employees with reference to race, color, sex, or ethnicity, other than to ensure that hiring is conducted in accordance with state and federal antidiscrimination laws;
- Promote or provide differential or preferential treatment or special benefits to a person or group based on that person’s or group’s race, color, sex, ethnicity, gender identity, or sexual orientation; or
- Promote or adopt training, programming, or activities designed or implemented with reference to race, color, sex, ethnicity, gender identity, or sexual orientation.

The term does not include the use of equal opportunity or equal employment opportunity materials designed to inform a person about the prohibition against discrimination based on protected status under state or federal law.

¹⁹ FLA. CONST. art. IV, s. 7.

²⁰ *Id.*

²¹ *Id.*

²² Section 112.51(3), F.S.

²³ Section 112.51(5), F.S.

²⁴ Section 112.51(6), F.S.

“Diversity, equity, and inclusion office” is defined as any office, division, department, agency, center, or other unit of a local government which coordinates, creates, develops, designs, implements, organizes, plans, or promotes policies, programming, training, practices, meetings, activities, procedures, or similar actions related to diversity, equity, and inclusion.

“Diversity, equity, and inclusion officer” is defined as a person who is a full-time or part-time employee of, or an independent contractor contracted by, a local government, whose duties cover the same fields as the office described above.

The bill provides that a member of a county or municipal governing body who violates the prohibitions commits misfeasance or malfeasance in office. An action in circuit court may be brought by a local resident against a county or municipality that violates the bill’s provisions; the court may enter judgment awarding declaratory and injunctive relief, damages, costs, and reasonable attorney fees to a prevailing plaintiff, but not to the prevailing government. Declaratory relief is a form of relief in which a court pronounces the legal status of an item or pronounces the correct ownership of something.²⁵ Injunctive relief occurs when a court grants an injunction to require a party to do something or refrain from doing a particular thing to prevent irreparable injury.²⁶

The provisions do not prohibit official action required for compliance with state or federal law or regulations. These sections do not apply to the actions of an appointed board or commission composed of nonelected volunteers, or basic administrative support provided to such a board, unless such support is provided by a government employee whose sole function is such support.

Section 3 creates s. 287.139, F.S., to provide that any potential recipient of a county or municipal contract or grant must certify before such award that they do not and will not use local government funds to require employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed using materials related to diversity, equity, and inclusion, as defined above.

The bill takes effect December 31, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁵ BLACKS LAW DICTIONARY (12th ed. 2024).

²⁶ *Id.*

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector impact in a particular county or municipality depends upon the extent to which the county or municipality is currently promoting DEI activities or valuing DEI in employment practices or in awarding contracts.

C. Government Sector Impact:

The public sector impact in a particular county or municipality depends upon the extent to which the county or municipality is currently promoting DEI activities or valuing DEI in employment practices or in awarding contracts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 125.595, 166.04971, and 287.139.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 17, 2025:

The committee substitute:

- Revises definitions in the bill to include DEI “offices” and “officers.”

- Broadens the preemption to include funding DEI related activities and funding or maintaining DEI offices and officers.
- Introduces a new section requiring any potential recipient of a county or municipal contract or grant to certify before such award that they do not and will not use local government funds to require employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed using materials related to DEI.
- Removes retroactive application of the bill.
- Changes the effective date from July 1, 2025, to December 31, 2025.

B. Amendments:

None.