What a journey! This year’s version of the Building Code Bill, CS/CS/CS/HB 535, was two years in the making. Recall last year’s strange turn of events? Just when it appeared the FHBA priority bill was set to be amended by the Senate and returned to the House for final passage, the House abruptly adjourned leaving the FHBA priority in limbo. One Budget Special Session later coupled with a confusing veto, we managed to squeeze out a delay of key provisions.

Fast forward to 2016 and the FHBA priority bill reaches final passage and gubernatorial approval. The 2016 Advocacy Briefing outlines key home builder issues adopted by the 2016 Legislature. Though fewer bills directly related to our business may have passed, I think you will agree the provisions of these bills are vitally important. The theme of the bills and their sponsors: reducing unnecessary regulation associated with building a house.

I want to personally thank Senator Travis Hutson and Representative Dane Eagle for their untiring efforts to pass the Building Code Bill. The leadership of Representative Matt Caldwell and Speaker of the House Steve Crisafulli resulted in a water policy bill relying on science in lieu of hysteria.

FHBA’s advocacy efforts extend beyond the 60-day legislative session. Both regulatory and legal action affect the Home building industry. This year’s expanded Advocacy Briefing highlights some of our regulatory and legal advocacy activities. Session is finished, but there are still battles to be won.
THANK YOU TO OUR SPONSORS!

The 2016 legislative session proved to be worth the hard work we put into it, starting at the close of the 2015 legislative session. Along with the efforts of FHBA leaders, volunteers, and staff, members of the House and Senate are to be commended for their support of issues that impact, not only our livelihood, but also Florida home owners.

I’d like to personally offer my appreciation to the legislators who helped make this legislative session successful for our members. These champions have worked alongside us to improve the economic business environment of the home building industry.

Ray Puzzitiello
President, FHBA

“As a member of the Home Building Industry, I understand how unnecessary regulations can strangle our businesses. I was thrilled to partner with the Florida Home builders Association in removing some of that burden” - Senator Travis Hutson

“It was a great honor to work so closely with the home building industry to scale back government intrusion and cut red tape, ultimately making the process more efficient and home ownership more affordable for all Floridians.” - Representative Dane Eagle.

CONTENTS

LEGISLATIVE ADVOCACY
4 Building Code
   4 - Workforce Taskforce
   5 - Uniform Implementation Workgroup
   5 - Reinserting the Shower Pan Exemption
   6 - Blower Door Testing
   7 - Fire Distance Separation and Zero Lot Line
11 Six-Year Code Cycle
12 Sadowski Funding
12 Springs and Aquifer Protection Act

REGULATORY ADVOCACY
13 Accountability for Permit Requests
13 - Florida Building Commission
14 - Florida Wildlife Commission
14 - Florida Department of Health
15 Estero Sprinkler Mandate
16 - Core Construction v. Crum
17 - Support Builders’ Rights

LEGAL ADVOCACY

Created within the building code bill, the Construction Industry Workforce Task Force will bring together 22 statewide employer and labor groups to create a consensus path to train the industry’s most important resource: our workforce. There are thousands of needed construction jobs statewide and this task force will address the demand for improved training in order for the construction industry to lead the way in hiring.

Task Force Objectives:

• Address the critical shortage of individuals trained in building construction and inspection;
• Develop a consensus path for training the next generation of construction workers in the state;
• Determine the causes for the current shortage of a trained construction industry workforce and address the impact of the shortages on the recovery of the real estate market;
• Review current methods and resources available for construction training;
• Review the state of construction training available in K-12 schools; and
• Address training issues relating to building code inspectors to increase the number of qualified inspectors.
BUILDING CODE
FUNDING FOR THE BUILDING COMMISSION’S UNIFORM SYSTEM IMPLEMENTATION WORKGROUP

The Building Code Bill provides up to $30,000 for the Florida Building Commission’s Uniform System Implementation Evaluation Workgroup. **The ultimate goal: establish uniform state-wide interpretations of plan review and code inspection and then determine driving forces behind inconsistent interpretations.** If we can identify the key provisions lacking uniform interpretations and then understand the genesis of the lack of uniformity, we can then correct the problem. Contractors who conduct business in multiple jurisdictions routinely express frustration over inconsistent code interpretations. Funding for this workgroup has been a top priority of Building Commission Member and former FHBA President, Jay Carlson.

“*In order to fully take advantage of a statewide construction code, we must invest to assure uniform interpretations to the greatest extent possible. As stakeholders it is our responsibility to work with those who interpret and enforce the code in order to make improvements and fashion a more efficient system.*”
- Jay Carlson, Building Commission Member and former FHBA President

BUILDING CODE
REINSERTING THE SHOWER PAN EXEMPTION

The exception to the plumbing code p2709 (mandatory shower lining) has been in the code for more than 20 years and in the last code it was arbitrarily removed. There is no reason to have a liner in a shower compartment that is recessed more than 2” below the finished floor. By simply recessing the compartment 2” or more, you eliminate the chance of water getting to the finished floor; therefore, the lining is not providing any additional benefit. The lining only adds unnecessary costs with no added benefit. **This is just one of several examples of the reduced regulation contained in the 2016 Building Code Bill.**

“*Today’s first time homebuyers are facing the most difficult real estate market in history. When unsubstantiated costs continue to decrease the purchasing power of the working class family, it is time to take a stand. This was a small victory, but it is important to stand up against runaway regulations that add no value to the process.*”
- Brian Walsh, VP of Purchasing and Production for Highland Homes.
The concept of mandatory blower door testing has consumed much of our advocacy energy over the course of the past few sessions. Though mandated by the International Code Council, FHBA members expressed concerns about the relevancy and costs associated with the test being mandated and the stringency of having to meet five air exchanges per hour. If the exchange rate was higher, some form of remediation was required. And, if lower, then the code required the introduction of mechanically-ventilated air.

On the heels of the one-year delay and economic impact study from the 2015 Special Session Budget Bill, FHBA sought to maintain blower door testing as an optional service in the building code. Amongst several reasons for keeping the test optional, FHBA expressed a concern that the standard of five ACHs per hour would diminish by thousands of dollars the value associated with certain floor plans such as bonus rooms (a new home design, which delivers great value per square foot).

Though we successfully maintained the test as an option through three Senate Committee Hearings and two House Committee Hearings, leadership at the final House Committee insisted the test remain mandatory to ensure the integrity of a new home’s thermal envelope, but expressed a desire to address the FHBA’s concerns by: ensuring enough authorized blower door testers exist prior to the effective date of the mandate, the test is passible, and the economies with certain floor plans is maintained. As a result, the final blower door provisions of the bill:

- Provide one final delay of the mandatory blower door test and associated mechanical ventilation requirements to July 1, 2017;
- Make blower door testing possible to pass, and maintain economies of certain floor plans, by raising the remediation threshold from more than five ACHs to more than seven ACHs and lowering the mechanical ventilation requirements from less than five ACHs to less than three ACHs; and
- Add HVAC Contractors to the list of persons allowed to conduct Blower Door Testing.

“At the end of the day, Home builders in Florida got the relief they needed. One last delay allows more personnel to be trained to conduct the blower door tests correctly, HVAC Contractors are specifically allowed to conduct the tests, and the benchmarks are attainable while maintaining the economies of certain popular floor plans. Job well done!” - Jeremy Stewart, FHBA First Vice President
BUILDING CODE
FIRE DISTANCE SEPARATION AND ZERO LOT LINE

FHBA succeeded in reinstating allowances for zero lot line developments, removing residential sprinkler mandates, and clarifying fire separation distances. The ability for developers and builders to design planned communities utilizing a “zero lot-line” method has long been an accepted practice in Florida. With the adoption of the 5th Edition of the Florida Building Code, provisions to allow zero lot line developments were inadvertently omitted. Moreover, under the new code, some fire separation distances would mandate a fire sprinkler in a single-family dwelling. FHBA modified HB 535 to re-instate zero lot-line provisions, eliminate the sprinkler mandate, and define FIRE SEPARATION DISTANCE as the distance measured from the building face to one of the following:

1. To the closest interior lot line;
2. To the centerline of a street, an alley, or a public way;
3. To an imaginary line between two buildings on the lot; or
4. To an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

The distance shall be measured at a right angle from the face of the wall.

FHBA also added language to direct the Florida Building Commission to amend the Florida Building Code to permit openings and roof overhang projections on the exterior wall of a building located on a zero lot line, when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1-hour fire-resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.

Most importantly, HB 535 reinstates the previous code provisions for fire separation distances for non-fire resistant rated exterior walls, projections and penetrations without requiring a fire sprinkler in the home. The Florida Building Commission must amend the Florida Building Code to state the minimum fire separation distance for non-fire resistant rated exterior walls shall be 3 feet or greater and non-fire resistant rated projections shall have a minimum fire separation distance of 3 feet or greater. Projections within 2 feet and less than 3 feet shall include a 1-hour fire-resistance rate on the underside. Projections less than 2 feet are not permitted. Penetrations of the exterior wall within less than 3 feet shall comply with Dwelling Unit Rated Penetration. Penetrations 3 feet or greater are not required to have a fire-resistance rating. Openings in walls shall be unlimited with a fire separation distance of 3 feet or greater.
BUILDING CODE
ACCOUNTABILITY FOR DENYING, REVOKING, OR MODIFYING A PERMIT REQUEST

“Governmental action, no matter how inconsequential, must be supported by law. Denying, revoking or modifying a permit is not immune from this standard”, believes Florida Lieutenant Governor Carlos Lopez-Cantera. Lieutenant Governor Lopez-Cantera was the driving force behind Section 18 of the Building Code Bill. This section of the bill provides that if a plans reviewer or building code official denies, revokes, or requests a modification of a permit application, a reason based upon non-compliance with the building code or local ordinance must be provided. If such a reason is not provided, disciplinary action against his/her license may ensue. This is a tremendous victory for the Home Building Industry in Florida. Never again should you be denied a permit or asked to modify a permit without the responding party citing the section of code or local ordinance being violated.

“It is only logical. If you know what technicality is being violated, you can effectively address the problem.”

- Carlos Lopez-Cantera, Florida Lieutenant Governor

BUILDING CODE
SAVING MONEY FOR ADDITIONAL FEES

The building code bill contains a provision that specifies local governments through enforcement of the Florida Building Code may not charge additional fees for proof of licensure, recording or filing a license, or providing evidence of workers’ compensation insurance coverage. A small change that can up to big savings.
BUILDING CODE
FUNDING FOR NON-BINDING INTERPRETATIONS OF THE FLORIDA FIRE PREVENTION CODE

FHBA secured funding for non-binding interpretations of the Florida Fire Prevention Code to provide stability and consistency in code implementation and enforcement. For years, builders have been able to avail themselves of non-binding interpretations of the Florida Building Code for a nominal fee and oftentimes these interpretations have directly saved builders money on their projects and provided consistency with code implementation and enforcement. Unfortunately, although the statutes allow for non-binding interpretations of the Florida Fire Prevention Code, the local fire officials have been hesitant to request an interpretation due to the fact that there was a cost associated with the request. In response to FHBA members and local fire officials communicating that the ability to rely on non-binding interpretations of the fire code would be beneficial, FHBA worked to secure $15,000 in funding from the building permit surcharge funds to help pay for non-binding interpretations of the Florida Fire Prevention Code managed by the State Fire Marshal.

BUILDING CODE
JOINT MEETING OF THE LOCAL CODE APPEALS BOARD AND FIRE CODE APPEALS BOARD

FHBA’s efforts result in swift decisions at the local level by combining local code and fire appeals boards to resolve disputes. Many communities have local boards created to address issues arising under the Florida Building Code and the Florida Fire Prevention Code. Too often, the local appeals board experiences difficulty in securing a quorum for their meeting, leaving the builder and developer in limbo awaiting a decision to move forward with their projects. To remedy this issue, HB 535 authorizes local appeals boards to meet jointly to create a single local board having jurisdiction over matters arising under either the Florida Building Code and/or the Florida Fire Prevention Code. The combined local appeals board may grant alternatives or modifications through procedures outlined in National Fire Protection Association (NFPA) 1, section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. In order to meet the quorum requirement for the new combined board, there must be at least one board member who is a fire protection contractor, fire protection design professional, fire department operations professional, or a fire code enforcement official.
BUILDING CODE
FIRE SERVICE ACCESS ELEVATORS IN HIGH-RISE FACILITIES

FHBA worked tirelessly to reach a compromise with fire officials to provide design and construction relief for fire service access elevators in high-rise facilities while simultaneously enhancing safety features. Conflicts between the Florida Building Code and the Florida Fire Prevention Code with respect to the requirements for a second fire-service access elevator, (a costly 150 square-foot lobby on each floor), and new standpipe requirements necessitated revisions to provide relief to builders and developers while still maintaining the highest level of building safety. FHBA worked diligently to specify only buildings with a height greater than 120 feet (measured from the elevation of street-level access to the level of the highest occupiable floor) must have two fire service access elevators, and all remaining elevators, if any, should have Phase I and Phase II emergency operations.

As a trade-off for the second elevator above 120 feet, FHBA negotiated key cost-saving safety measures that clarify direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length, is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke-rated openings. During a fire event, the fire service access elevator must be pressurized and floor-to-floor smoke control provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required.

Negotiating safety concerns with the fire service industry while still protecting the home builders interests, FHBA clarified in HB 535 that standpipes in residential high-rise buildings must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.
SENATE INTERIM STUDY CONSIDERS MOVING TO A 6-YEAR CODE CYCLE

You may have noticed a missing piece in this year’s Building Code Bill—FHBA’s language providing for a study of how Florida could implement a more manageable 6-year code cycle, which currently changes every three years. As the code bill progressed in later committee hearings, it was clear that including language about the prospect of moving to a 6-year code cycle would only create more misguided opposition to HB 535. After consulting with our sponsors and other legislative leaders, efforts to include this important provision were removed.

However, with the help of Senator Wilton Simpson (R-Tribly) and his staff and with the approval of Senate President Andy Gardiner (R-Orlando) the Senate Committee on Community Affairs will conduct the study. It is our hope this “interim legislative project” will result in model legislation moving Florida from a 3-year code cycle to a 6-year code cycle.
SPRINGS AND AQUIFER PROTECTION ACT

To truly appreciate the final bill, let’s review how the first proposals dealt with on-site sewage systems. The first iterations of The Florida Springs and Aquifer Protection Act actually prohibited the use of on-site sewage systems in first magnitude spring-shed areas. There were several issues with this initial approach. First, the legislation assumed that all on-site septic systems were a significant source of spring degradation. Secondly, a spring-shed area is huge. For instance, practically all of Leon County is a spring-shed area for Wakulla Springs. The net affect would have been to shut down residential development in large swaths of Florida.

SB 552, as adopted by the Legislature, creates a more scientific approach to protecting Florida’s springs and aquifers. If the Basin Management Action Plan (BMAP) process of a first magnitude springs priority zone area (smaller than a spring-shed) determines that on-site septic systems were responsible for 20 percent or more of the springs degradation, the local area (water management and local governments) would develop on-site sewage regulations. This is a more scientific process and places future regulations in the hands of local entities in lieu of a one-size fits all prohibition.

One challenge is to ensure that home builders volunteer to serve on the local boards and commissions conducting the BMAPPing process. Contact your local builders association if you want more information about serving in this important capacity.

SADOWSKI FUNDING

Though the legislature continues to sweep monies from Florida’s trust funds and move them into general revenue, this year’s sweep of the Sadowski Trust Fund wasn’t as harsh. Of the $324 million available, the legislature appropriated $214.1 million to the trust fund for Florida’s affordable housing programs. This includes $134 million for the State Housing Initiatives Partnership (SHIP) at the local level.

SHIP funds can be used to move existing housing stock and provide first time homeownership with down payment and closing cost assistance. In addition, SHIP funds can be used for rehabilitation and/or renovation of existing housing stock to allow seniors to age in place or to provide retrofitting for persons with special needs. (A chart of local governmental allocations can be found at fhba.com.)
The FHBA continues to monitor and participate in a number of regulatory functions including but not limited to:

**FLORIDA BUILDING COMMISSION**

The Florida Building Commission is in the process of developing the 6th addition of the building code, which will take effect on December 31, 2017. The lobbying effort, lead by FHBA codes consultant Joe Belcher and FHBA Codes Committee Chair Lee Arsenault, will continue throughout this summer. If unchecked, this process could result in unnecessary regulation. The code is THE document that governs construction. Having an effective voice at the Florida Building Commission is one of the most important functions of the FHBA. Stayed tuned to FHBA news outlets for updates on these lobbying activities.
REGULATORY ADVOCACY

FLORIDA WILDLIFE COMMISSION
In October of 2015, the Florida Wildlife Commission presented their draft of the Imperiled Species Management Plan (ISMP), the permitting guidelines developed to date, and the published rule changes to the Commission for adoption at its meeting on April 13-14, 2016 in Jupiter, Florida. This hearing has been postponed until later in 2016. This ISMP plan will result in 57 different species being regulated.

Despite the overbreadth of ISMP language and proposed permitting guidelines that bear careful watching, certain rule and policy changes can be expected to provide a safe, albeit very conservative, framework in which to conduct activities without concern of causing a “take”, i.e., death or injury of a migratory bird or listed species. The inactive migratory bird nest rule, inactive single-use nest policy, and aversive conditioning policy provide some black-line guidance as to allowable activities.

Species protection and regulation can be an impactful cost of development and can actually stop new development from happening. At a time when buildable lots are shrinking and becoming more costly, issues such as the ISMP must not be allowed to be overly complex.

FLORIDA DEPARTMENT OF HEALTH
The Florida Department of Health (DOH) has an ongoing Onsite Sewage Treatment and Disposal System (OSTDS) research program with a goal of providing reliable, cost-effective systems that most effectively protect public health and the environment. In addition, the Legislature has provided funding for special projects, such as the FHBA supported Nitrogen Reduction Strategies Study, which is now completed. We anticipate DOH will soon promulgate rules implementing the studies findings. Any builder that relies on an OSTDS knows how important the cost of providing such a system is to the final price of the house.

FHBA members, who serve on various advisory DOH committees, and FHBA governmental affairs staff advocate to assure that OSTDS requirements are scientifically based and cost-effective.
Lee Building Industry Association (BIA) and FHBA filed an injunction to halt a resolution going into effect in the Estero District of Lee County. This comes as a result of the Estero Fire Rescue District’s misguided policy, mandating that one and two-family dwellings in their area be built with sprinkler systems. The joint suit claims that the District adopted this resolution using improper methods and that, if allowed to go into effect, would create uncertainty as to whether or not the resolution would actually be enforced.

Lee BIA and FHBA attempted to alert the District to the defects in which the resolution was adopted. The District has also been alerted to inaccuracy behind the cost and benefit report, and that Lee County has no intention of enforcing the resolution if it becomes effective. Despite this and the fact that the District has no authority to enforce the resolution, the District is undeterred and refuses to withdraw or reconsider the resolution.

During the 2015 FHBA Fall Conference, the FHBA Executive Committee approved funding to assist Lee BIA to defeat this unfounded policy. Although the initial effective date of the resolution was set for November 15, 2015, it has been delayed a number of times and it is unclear when the resolution will go into effect.

Here’s what this means to you.

1. If the Estero District is allowed to adopt this resolution without following the procedures required by Florida law, then other districts and enforcement agencies would attempt to do the same in their areas.

2. If this particular resolution goes into effect in Estero or anywhere else in Florida, then the cost of construction and maintenance of the fire sprinkler systems in one and two family homes would significantly increase the cost of new homes for homebuyers and home builders alike.

We will keep you up-to-date on this frustrating issue: Estero District’s response to the injunction, turning points in the suit, and the statewide impact. As always, FHBA works to improve the economic impact of Florida’s home building environment.
CORE CONSTRUCTION SERVICES SOUTHEAST V. CRUM & FORSTER SPECIALTY INS. CO.

This is a federal case out of the Southern District of Florida, where several roofs in a condominium development were damaged when Hurricane Wilma came ashore in 2005. The condo association sued the general contractor and the general contractor sued the insurance company. The general contractor claimed that this suit triggered the insurance company’s duty to defend under the insurance policy as the general contractor was an additional insured under the policy. The insurance company denied coverage on the basis that, under Florida law, faulty workmanship must result in damage to some other element to cause property damage. While the complaint alleged that the roof was damaged due to faulty workmanship and installation, the complaint did not allege any other property damage. Despite the fact that evidence was presented of property damage other than damage to the roof, the Court agreed with the argument of the insurance company and ruled that because the complaint failed to allege property damage, the insurance company has no duty to defend or indemnify the general contractor.

The general contractor has appealed to the Eleventh Circuit Court of Appeals. The basis for the appeal is that the trial court misconstrued Florida law. The general contractor makes two arguments. First, the claim is based on allegations of faulty installation and not a faulty product; therefore, the property damage required by Florida law is the damage to the roof itself during the faulty installation. Second, if the complaint alleges facts, which creates potential coverage under the policy, then the duty to defend is triggered and the trial court has reversed the burden to require a claimant under an insurance policy to specifically allege property damage.

The importance of this case is that it will define or clarify when the insurance company’s duty to defend is triggered—at the higher standard of a complaint specifically alleging facts of property damage, or at the lower standard of a complaint alleging facts sufficient to create potential liability under the policy.
ASSOCIATIONS FILE APPELLATE BRIEF TO SUPPORT CONSTITUTIONAL RIGHTS OF BUILDERS

The FHBA and the National Association of Home builders (NAHB) recently participated in the important case of Highlands-In-The Woods, LLC v. Polk County. In the Highlands case, the Second District Court of Appeal is examining whether Polk County complied with the United States Constitution when it conditioned its permit approval process on the dedication and construction of a water reuse system. Polk County asserts that the water reuse system is a requirement of its comprehensive plan that is consistent with mandates from the Southwest Florida Water Management District. The case is currently on appeal before the Second District Court of Appeals as the trial court found in favor of Polk County and determined that the required water reuse system was permissible.

During the appeal, which is now underway, the FHBA and NAHB requested approval from the appellate court to file an amicus curiae (“friend of the court”) brief in order to further the appellate court’s understanding of the Constitutional protections, which protect builders when required easements or dedications go too far. The appellate court granted the motion and the Associations filed a comprehensive brief which explained the differences between comprehensive plan “legislative” mandates and individually required dedications or “exactions.” Exactions have always been subject to Constitutional limitations that protect landowners and builders. Legislative mandates, however, are different and typically involve legislative determinations that classify entire areas of a city and place restraints on permitted uses (instead of a requirement that a landowner deed portions of the property to the government or engage in a required use).

In this case, the Associations’ brief argued that Polk County’s actions were an exaction because Polk County required Highlands to construct and dedicate a water reuse system. Put another way, the County’s actions involved more than a restraint in use. Because the County’s act was an “exaction,” the Associations argued that the trial court should have looked to Constitutional law which places certain limits on government exactions.

The Constitutional protections afforded to builders are important and the Associations are pleased that the appellate court welcomed their input into this important judicial process. A final decision is expected sometime this Fall.
These and more issues affect the building industry’s business environment. Tell us how we can better resolve these concerns for you during the 2017 Legislative Session.

Contact Rusty Payton, FHBA CEO, at rpayton@fhba.com or call 850.402.1841.
LET’S FACE IT

OUR JOBS ARE BEING INFLUENCED BY NON-BUILDERS

Let’s face it, you must be a part of the decision making process that is happening at the Capitol. Join forces with the Florida Home Builders Association (FHBA), your leading builder advocate, to fight unnecessary fees and seek ways to stop burdensome regulations.

THE FHB PAC 1000 CLUB hammers home the financial support necessary to elect pro-builder candidates who share our ideas and understand building is a vital part of Florida’s economy.

Become a 1,000 Club Member today and be:
• Invited to exclusive receptions and meetings with key Legislators where you can voice your concerns,
• Given priority consideration for the delivery of checks to candidates, and
• Recognized in publications and at meetings as an advocate of the building industry.

Become a member and ensure your building industry grows in strength and numbers

Join today! Call Rusty Payton at 850.402.1841 or email rpayton@fhba.com

All contributions to the FHB PAC are considered political contributions and are non-deductible as a business expense for Federal Income Tax purposes.
THE FHBA WORKS IN PARTNERSHIP WITH 24 LOCAL AND REGIONAL BUILDER/INDUSTRY ASSOCIATIONS TO ACHIEVE LEGISLATIVE SUCCESS.

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