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Tired of bumper-to-bumper traffic? Fix Florida's pre-emption law | Opinion

It's not like Palm Beach County isn't aware of the problem. Their hands are simply tied. They are pre-empted by the state of Florida from delaying new developments no matter its impact on traffic.

Douglas C. Lyons The Palm Beach Post

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Want to better understand Florida's "pre-emption" laws? Try driving along a still-idyllic stretch of Lyons Road just west of Delray Beach during the afternoon rush hour. Heading north, the two-lane road offers a big-sky view of what's left of the Ag Reserve before encountering several gated communities named after an orange.

At that point, traffic slows to a bumper-to-bumper pace, and thanks to your state government, it'll get worse before your local government can address the gridlock. GL Homes is building a high-end subdivision, Whitworth South. By the end of 2025, 481 new homes will dump more vehicles onto an already crowded road that won't be widened before 2026, and that's an optimistic estimate, according to some county officials.

It's not like Palm Beach County isn't aware of the problem. Their hands are simply tied. They are pre-empted by the state of Florida from rejecting or even delaying Whitworth South, no matter its impact on traffic.

Florida law — Chapter 163.3180 (5) (h), to be exact — gives leeway to developers building in counties that have comprehensive land use policies, like Palm Beach County. Developers in those counties can propose paying a "proportionate share" to help mitigate the negative impact of additional traffic from their projects. The law doesn't put a specific value on proportionate share. It could be almost any

improvement that helps mitigate traffic congestion but not resolve it. Once an agreement is reached, that's it. No do-overs, no delays and no demands for additional payments. GL Homes met its obligations, leaving the county as a law-abiding bystander.

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“We are going to have all this traffic going onto a road that the applicant’s own traffic expert says is deficient,” County Commissioner Maria Sachs said last month when the county commission was considering GL Homes' 12th luxury residential community in the area. “Give us the time to build the infrastructure. This is not good for the people.”

Sachs' pleas fell on deaf ears. Citing the developer's earlier traffic mitigation agreement and the state law barring local governments from taking any action that might delay the project, the commission sided with GL Homes.

State has a history of pre-emption laws

State preemption laws aren't new. To hear Cragin Mosteller, spokeswoman for the Florida Association of Counties, tell it, legend has it that it was pre-emption law that led to the association's formation in 1929. The controversy? Fences.

Farmers, Mosteller said, protecting their property, put them up. Ranchers hated the obstruction and opposed the fences. The two groups turned to their local governments, and the counties supported the farmers. The ranchers, upset that counties had the nerve to side with farmers and fences, turned to state lawmakers in Tallahassee. The result? A pre-emption was born. "So the story goes, thanks to a pre-emption, that's why we exist," she said.

Since then the state has pre-empted local governments from banning plastic bags, and issuing parade permits for events Tallahassee might deem inappropriate for

children, like gay-pride parades. In 2020, Key West voters concerned about crowding and environment, passed a referendum limiting the size and number of ships visiting the city. It didn't take the state long to pre-empt the referendum.

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Thanks to state pre-emption, counties and cities can't keep e-scooters off of public sidewalks, and last year the state banned local governments from helping tenants cope with rising rents. It's the state that now supposedly protects outdoor workers from heat exposure, a concern Miami Dade County officials tried to address. So much for assuming local governments are best equipped to handle local issues because they're the closest to their constituents.

For developers like GL Homes, traffic mitigation pre-emption saves money from delays by local governments that may find the initial agreements unsatisfactory to meet the impact of additional traffic. For the drivers stuck in gridlock as they crawl by signs of new communities to come, pre-emption has a different meaning entirely.

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