SPELLMAN
LAW P.A.

MEMORANDUM

TO: **Eric Hartwell, General Counsel.**
Florida League of Cities

FROM: **Michael Spellman, Esq.**

DATE: **May 8, 2026**

RE: **Legal Advisory—Fla. SB 1134 (2026), New Local Government DEI Prohibition**

I. Status of the Law

CS/CS/SB 1134 passed the Florida Legislature — the House 77-37 and the Senate 25-11 — and the Governor signed the legislation on April 22, 2026. The law takes effect January 1, 2027, providing a meaningful compliance window. This advisory summarizes the statute's operative provisions, exceptions, and recommended compliance steps.

II. Background: The National and State Anti-DEI Legislative and Executive Framework

SB 1134 does not emerge in isolation. It is the latest act in a sustained effort by both federal and Florida state officials to dismantle DEI programs across public institutions. Understanding that broader framework is essential context for advising local governments on their compliance obligations and for anticipating litigation risks.

A. The Supreme Court Foundation (2023)

The modern anti-DEI legal movement gained decisive federal momentum from the Supreme Court's June 2023 decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College (SFFA)*, 600 U.S. 181 (2023). In *SFFA*, the Court struck down race-conscious admissions programs at Harvard College and the University of North Carolina, holding that such programs violated the Equal Protection Clause of the Fourteenth Amendment. The Court concluded any race-based state action is presumptively unconstitutional and must

survive strict scrutiny by serving a compelling governmental interest and being narrowly tailored — a standard the Court found neither institution met.

Although decided in the context of college admissions, *SFFA* provided the constitutional justification required to support anti-DEI policy. It reframed voluntary DEI programs — not just explicit quotas — as potential constitutional violations, and its reasoning has been invoked by both the Trump Administration and the Florida Attorney General as the predicate for sweeping executive and legislative action.

B. Federal Executive Action: The Trump Administration (2025–2026)

Upon taking office on January 20, 2025, President Trump moved immediately and aggressively to dismantle DEI across the federal government and beyond. The administration's actions have proceeded in distinct waves:

1. Day-One Executive Orders (January 20–21, 2025)

On his first day in office, President Trump signed two foundational DEI-related executive orders:

- **EO 14151 — "Ending Radical and Wasteful Government DEI Programs and Preferencing"** (January 20, 2025): Directed the Office of Management and Budget to terminate all mandates, policies, programs, preferences, and activities related to DEIA across the federal government. The order required agencies to report all employees in DEI positions to the OMB within 60 days and directed the termination of all equity-related grants and contracts.

- **EO 14173 — "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"** (January 21, 2025): Revoked Executive Order 11246, the landmark 1965 Johnson Administration order that had required federal contractors to take affirmative action to ensure equal employment opportunity — an obligation governing federal contracting for nearly 60 years. The order further required all federal contractors and grantees to certify that they do not operate DEI programs violating federal antidiscrimination laws and instructed the Attorney General to identify up to nine large private-sector entities for potential civil compliance investigations.

2. DOJ Enforcement Escalation (February–May 2025)

Attorney General Pam Bondi issued a memorandum on February 5, 2025, directing the DOJ's Civil Rights Division to investigate and eliminate illegal DEI and DEIA preferences in the private sector and in educational institutions receiving federal funds. In May 2025, DOJ formally announced the creation of a Civil Rights Fraud Initiative, directing changes to the contractor pre-award certification process among companies doing business with the federal

government. Pre-award contractor certifications would expressly require for the first time as a material term of accepting grant awards, complying with executive orders targeting illegal DEI and DEIA or facing potential False Claims Act (FCA) violations .

3. Ongoing Agency Implementation (Mid-2025)

Throughout 2025, the administration implemented its DEI policy agenda across the federal bureaucracy: DEI offices were closed and their employees placed on administrative leave, military officers accused of supporting diversity policies were removed, and federal agency websites and procedural handbooks were purged of DEI-related language. In July 2025, President Trump signed an executive order requiring that AI models procured by the federal government prioritize truthfulness and ideological neutrality rather than DEI principles.

4. Federal Contractor Executive Order (March 26, 2026)

On March 26, 2026 — just days before SB 1134 passed the Florida Legislature — President Trump issued EO 14398, "Addressing DEI Discrimination by Federal Contractors." This order directed all executive agencies to insert standardized contract clauses prohibiting "racially discriminatory DEI activities" into all federal contracts within 30 days (by April 25, 2026). Noncompliance consequences include contract termination, suspension and debarment, and express False Claims Act liability. The order applies to all tiers of subcontractors, meaning the compliance obligation flows down through the entire federal contracting supply chain.

On April 17, 2026, the FAR Council[1] issued a memorandum and class deviation creating FAR 52.222-90, directing agencies to insert the new clause in covered solicitations and contracts beginning on April 24, 2026, and to update their acquisition regulation deviations by April 27, 2026. Agencies are expected to modify existing contracts to include the clause by July 24, 2026. If a contractor refuses a bilateral modification, contracting officers are instructed to consider whether the unmodified contract still meets agency needs and should therefore be terminated for convenience.

Practical significance for local governments: Any county or municipality that receives federal grants or contracts — or whose vendors and contractors do — is now operating in an environment where any affirmative federal DEI compliance obligations run in direct tension with the new state law's own DEI restrictions. The interplay between these two regimes is a primary compliance risk area addressed in the Q&A section of this advisory.

[1] FAR stands for Federal Acquisition Regulation and is the primary body of rules governing how the federal government purchases goods and services through contracts. The FAR is codified at Title 48 of the Code of Federal Regulations and applies to all executive branch agencies when they acquire supplies and services. The FAR Council referenced in the reporting is a body composed of the Administrator of the Office of Federal Procurement Policy and the heads of the civilian and defense acquisition councils, which is responsible for issuing and amending the FAR.

5. Litigation Landscape

The Trump DEI executive orders have faced significant legal challenges. A Maryland federal district court entered a preliminary injunction in February 2025, blocking enforcement of key provisions of EO 14151 and EO 14173. The Fourth Circuit vacated the injunction in March 2025, allowing key provisions to proceed, though the underlying constitutional questions remain unresolved. On April 20, 2026, a coalition of higher education and minority trade associations filed a lawsuit in the U.S. District Court for the District of Maryland challenging EO 14398 and seeking to enjoin its implementation. The case is *National Association of Diversity Officers in Higher Education v. Trump*, No. 8:26-cv-01532 (D. Md. filed Apr. 20, 2026) — the same court that initially enjoined EO 14151 and EO 14173 in early 2025.

C. Florida Executive and Legislative Action: The DeSantis Administration (2022–2026)

Under Governor Ron DeSantis, Florida has been the most active state in the nation in restricting DEI, beginning years before the Trump Administration's federal actions. SB 1134 is the culmination of a four-year legislative campaign that proceeded in distinct phases:

Phase 1: The Stop WOKE Act (2022)

In April 2022, Governor DeSantis signed the Individual Freedom Act — commonly known as the Stop WOKE Act. The law restricted schools and businesses from promoting certain concepts related to race, gender, and social privilege. U.S. District Judge Mark Walker ruled in August 2022 that its workplace training provisions violated the First Amendment. The Eleventh Circuit affirmed the workplace ruling in 2024, finding the law engaged in unconstitutional viewpoint discrimination. The K–12 school provisions remain in effect.

Phase 2: Banning DEI in Higher Education — SB 266 (2023)

In May 2023, Governor DeSantis signed Senate Bill 266, prohibiting Florida's public colleges and universities from spending state or federal funds on DEI programs or campus activities. The law also banned anti-bias and cultural competency training and restricted general education courses deemed to incorporate identity politics. The University of Florida eliminated all 13 full-time DEI staff positions and removed administrative appointments for 15 faculty members in early 2024. SB 266 faces ongoing First Amendment litigation, with a formal lawsuit filed in August 2024.

Phase 3: Board of Governors Regulatory Action (January 2024)

In January 2024, the Florida Board of Governors — predominantly DeSantis appointees — voted to extend the DEI prohibition by regulation, barring state universities from using state

or federal funds to promote, support, or maintain any programs or campus activities that advocate for DEI or that promote or engage in political or social activism.

Phase 4: AG Opinion on Race-Based State Laws — AGO 2026-02 (January 2026)

On January 19, 2026, Florida Attorney General James Uthmeier issued AGO 2026-02, opining that any Florida statute mandating discrimination based on race is presumptively unconstitutional under the Fourteenth Amendment and the Florida Constitution, applying strict scrutiny under *SFFA*. While the opinion addressed laws requiring race-conscious action rather than laws prohibiting DEI, it provided the constitutional and rhetorical foundation for SB 1134.

Phase 5: Extending the Ban to Local Governments — SB 1134 (2026)

CS/CS/SB 1134 represents the final and most expansive phase of Florida's anti-DEI campaign: extending preemption downward to counties and municipalities. SB 1134 reaches local governments — the last major category of public institution not yet subject to a DEI prohibition — and does so with enforcement mechanisms (personal misfeasance liability for elected officials, a private right of action) that are unprecedented in Florida's prior DEI legislation.

During Senate debate, lawmakers cited various county government expenditures on DEI training and on contracts for unconscious bias training. Opponents argued the bill is vague by design and that its scope would extend to cultural festivals, minority- and women-owned business programs, LGBTQ observances, and other community programming.

D. Significance of This Background for Local Government Compliance

Several practical observations flow from this legislative history and are material to advising your local government:

- **The federal-state convergence creates layered compliance obligations.** Trump's EO 14398 and SB 1134 both became law within days of each other. Local governments that receive federal funding face obligations running in both directions, which must be carefully reconciled.

- **Prior Florida DEI legislation has faced significant constitutional headwinds.** The Stop WOKE Act was substantially enjoined on First Amendment grounds, and SB 266 faces pending litigation. SB 1134 presents similar constitutional vulnerabilities, but since the likelihood of any judicial intervention and overturning of SB 1134 remains speculative at this point, hopes around judicial intervention should not form part of a compliance strategy.

- **The trajectory is toward expansion, not contraction.** Each successive Florida enactment has broadened the scope of the DEI prohibition and sharpened enforcement mechanisms. Local governments should plan their compliance posture accordingly.

- **Vagueness and poorly defined scope are recurring themes.** Opponents of both the Stop WOKE Act and SB 1134 have consistently argued — with some judicial support — that the statutes are intentionally broad. That vagueness creates compliance uncertainty even for activities local governments believe are permissible, and counsels in favor of conservative, well-documented compliance decisions.

III. Frequently Asked Questions

The following questions and answers address the operative provisions of CS/CS/SB 1134, what is prohibited, what is permitted, and what steps local governments must take before January 1, 2027.

Question 1: What does the law actually do?

Answer:

SB 1134 is a state preemption statute that prohibits counties and municipalities from funding, promoting, or taking any official action relating to diversity, equity, and inclusion. The Legislature is expressly occupying this field of law and removing local governments' home rule authority to act within it. Four core operative provisions drive the statute:

- **Broad prohibition:** No county or municipality may fund or promote, directly or indirectly, or take any official action — including adopting or enforcing ordinances, resolutions, rules, regulations, programs, or policies — as it relates to DEI. Any such existing instruments are declared void by operation of law on January 1, 2027.

- **No DEI offices or officers:** No funds, regardless of source, may be used to establish, sustain, or staff a DEI office, or to employ, contract, or otherwise engage a DEI officer.

- **Contractor certification:** Every potential recipient of a county or municipal contract or grant must certify before award that they will not use local government funds to require anyone to ascribe to, study, or be instructed using DEI materials.

- **Personal liability:** Any county commissioner, municipal governing body member, or other municipal or county official who violates the statute while acting in an official

capacity commits misfeasance or malfeasance in office, exposing them to gubernatorial suspension.

Question 2: How does the law define "DEI" — and why does that definition matter so much?

Answer:

The statutory definition is the most operationally critical provision. Under the bill, "Diversity, equity, and inclusion" means any effort to:

1. Manipulate or otherwise influence the composition of employees with reference to race, color, sex, ethnicity, gender identity, or sexual orientation (other than to comply with antidiscrimination law);

2. Promote or provide preferential treatment or special benefits to a person or group based on those characteristics; or

3. Promote or adopt training, programming, or activities designed or implemented with reference to those characteristics.

Based on its potential scope, the third prong is the most consequential. The phrase "designed or implemented with reference to" race, sex, gender identity, or sexual orientation has no statutory limiting principle. Opponents during floor debate specifically warned this language is so broad that activities as routine as mentioning a community event at a county meeting or posting a flyer could expose a local government to litigation. Given that the statute defines 'acting in an official capacity' to include any exercise of governmental authority, a commissioner's verbal acknowledgment of a DEI-related event *during a public meeting* — even without a formal vote — is not clearly outside the statute's reach.

Statutory construction may provide a meaningful limiting principle on the third prong's reach. "Activities" is a general term that follows two specific terms — "training" and "programming" — both of which connote structured, organized, institutionally-sponsored undertakings with deliberate design. Under the *ejusdem generis* canon of construction, well-established in Florida courts, a general term following specific ones is limited to things of the same kind as its predecessors. "Activities," read in this light, should encompass only organized, entity-sponsored or officially-endorsed undertakings of a similar institutional character — not informal employee interactions, ambient workplace culture, or neutral activities with incidental demographic participation. This reading is reinforced by the statute's own qualifying language: the activity must be "designed or implemented" with reference to a listed characteristic, which independently requires intentional construction with a specific purpose rather than mere incidental connection. This limiting construction also avoids the

constitutional vagueness problem that a broader reading would create, and courts are obligated to adopt constructions that save statutes from unconstitutionality when available. While no court has yet interpreted this language, the argument is grounded in established canons and represents the most legally defensible position available to local governments seeking to distinguish permissible activities from prohibited ones. Cities should document reliance on this construction in writing for any activity they continue on this basis.

Critically, the definition expressly excludes equal opportunity and equal employment opportunity (EEO) materials designed to inform employees about the prohibition against discrimination under state or federal law. That carve-out preserves standard EEO compliance functions.

Question 3: What activities are expressly permitted — what are the exceptions?

Answer:

The bill contains several enumerated exceptions. These are not discretionary — they are statutory carve-outs that local governments can and should rely on. They include:

- **Federal and state law compliance:** Any official action **required for compliance with state or federal laws or regulations** is fully exempt. This is the most important exception — the federal compliance exception covers (a) conduct required by federal statute (Title VII, ADA, Section 504), (b) conduct required by agency regulation implementing a federal statute, and (c) grant conditions that are expressly mandated by the authorizing statute or implementing regulation — but that agency-discretionary grant terms not grounded in statute or regulation may not reliably qualify. Fla. Stat. §§ 125.595(7)(a), 166.04971(7)(a).

- **EEO materials:** Equal opportunity and EEO materials informing employees about the prohibition against discrimination remain permissible. Fla. Stat. §§ 125.595(7)(c), 166.04971(7)(c).

- **Federal holidays:** Recognizing or promoting holidays designated by federal law under 5 U.S.C. § 6103 (e.g., Martin Luther King Jr. Day, Juneteenth, Veterans Day). Fla. Stat. §§ 125.595(7)(b)(1), 166.04971(7)(b)(1).

- **State holidays and special observances:** Recognizing or promoting state holidays and special observances designated by Florida law under Chapter 683. Fla. Stat. §§ 125.595(7)(b)(2), 166.04971(7)(b)(2).

- **Patriotic and national observances:** Recognizing patriotic observances under 36 U.S.C. §§ 101–148, or the events and individuals forming the basis for such observances. Fla. Stat. §§ 125.595(7)(b)(3), 166.04971(7)(b)(3).

- **State and federal monuments and memorials:** Recognizing or honoring individuals and groups honored by state monuments, memorials, and museums under chapters 265 and 267, or operating federal monuments located in Florida. Fla. Stat. §§ 125.595(7)(b)(5)-(6), 166.04971(7)(b)(5)-(6).

- **Content-neutral event permits and public safety:** Issuing event permits without viewpoint discrimination and providing public safety services. Fla. Stat. §§ 125.595(7)(b)(7), 166.04971(7)(b)(7)

- **Nonprofit single-sex programs:** Promoting or supporting a nonprofit providing single-sex programs for the homeless or for at-risk youth. Fla. Stat. §§ 125.595(7)(b)(4), 166.04971(7)(b)(4)

- **Race/ethnicity-based public health services:** State and federal laws ensuring access to health care services corresponding to a person's race or ethnicity are not in conflict with the bill. Fla. Stat. §§ 125.595(7)(d)(5), 166.04971(7)(d)(5).

- **Non-elected volunteer bodies:** Actions of boards or commissions composed entirely of nonelected volunteers are exempt, as is basic administrative support to such bodies (unless the sole function of the employee providing that support is doing so). Importantly, these boards must be ENTIRELY composed of volunteers; having a local official sit ex officio probably defeats the exemption. Fla. Stat. §§ 125.595(8), 166.04971(8).

Question 4: What personal risk do elected and appointed officials face?

Answer:

The personal exposure created by this statute is real and immediate. Any county commissioner, municipal governing body member, or other county or municipal official who violates the statute while "acting in an official capacity" commits misfeasance or malfeasance in office.

Under Article IV, § 7 of the Florida Constitution, the Governor may suspend any county or municipal officer for malfeasance or misfeasance — and this does not require a prior court proceeding. The Governor may issue an executive order of suspension, and the official's only

recourse is an appeal to the Florida Senate. Given the Senate's current 28-12 Republican supermajority, it is reasonable to assume that recourse is limited in practice.

Officials should be counseled that "acting in an official capacity" is defined broadly: it means performing or purporting to perform a function, duty, or responsibility assigned by law, rule, or policy to a public officer or employee, or otherwise exercising or claiming to exercise the authority of such office. This covers not just formal votes and ordinance adoptions, but also official statements, official social media posts, participation in events as a government representative, and the issuance of proclamations.

While the misfeasance risk is real, officials should also understand what the statute leaves open. The restriction applies only to conduct in an "official capacity." From a practical standpoint, personal, non-official speech remains fully protected. Thus, an elected commissioner may, as a private citizen: post on a personal social media account without using an official title or government platform; attend and speak at events as an individual; sign advocacy letters in a personal capacity; and express views in interviews where they make clear they are not speaking in their governmental role. The compliance obligation runs to official acts — formal votes, official statements, use of official communications channels, government event participation in a representative capacity, and the issuance of proclamations.

Question 5: Who can sue the local government, and for what?

Answer:

The statute creates a private right of action allowing any resident of the county or municipality to bring a civil action in circuit court against the local government for a violation. The court may enter judgment awarding:

- Declaratory relief (a court pronouncement that the local government's conduct is unlawful);
- Injunctive relief (a court order requiring the local government to stop or take certain action); and
- Damages and costs, including attorneys' fees.

The combination of a low standing threshold (any resident), broad remedies (including damages), and the availability of attorneys' fees creates significant litigation exposure. A resident lawsuit can be filed the day the law takes effect without any preconditions. January 1, 2027, should be considered as a hard litigation trigger date.

Be mindful that if an employee is also a resident of the county or municipality, nothing prevents that employee from suing his or her employer. Such an action would likely trigger protections under Florida's Public-Whistleblower Act. Any retaliatory action by the employer could result in significant damages (which are not subject to the sovereign immunity cap) including attorney's fees. Also, remember that under the Florida Public Whistle-blower Act, an actual violation need not be shown; only a suspected violation of a law, rule, or regulation; or misfeasance or malfeasance. Clearly, then, this is an added layer of vulnerability.

Question 6: What happens to existing DEI-related ordinances, programs, and contracts?

Answer:

The statute addresses existing instruments in two distinct ways:

- **Ordinances, resolutions, rules, regulations, programs, and policies:** Any such existing instruments relating to DEI are declared void by operation of law on January 1, 2027. They do not need to be separately repealed to become unenforceable — the statute voids them automatically. However, formal repeal or amendment before that date is strongly advisable to avoid ambiguity and to demonstrate good-faith compliance.

- **End of Contracts with DEI officers:** The contractor certification requirement applies to any contract between a county or municipality and a DEI officer that is in existence on January 1, 2027. As of that date, expenditures on such contracts automatically become unlawful; therefore, those contracts must be reviewed and renegotiated to fully comply with SB 1134 or otherwise terminated by that date.

- **Flexibility Around All other contracts:** For all contracts other than DEI officer contracts, the certification requirement applies only to contracts executed or renewed after January 1, 2027. The practical effect here is existing non-DEI-officer contracts do not require certification unless or until "renewal" occurs, avoiding impairment of existing contract obligations across municipal operations.

Question 7: Does the law apply if DEI activities are funded entirely by federal grants, not ordinary local government revenues?

Answer:

It depends.

Yes—for DEI offices and DEI officers, the law's prohibition applies to all fund expenditures, whether sourced from federal, local or private funds, and forbids all such expenditures. The prohibition on DEI offices and officers expressly applies to funds "regardless of source." Federal grants, private donations, and other non-local-tax revenue sources do not exempt a local government from the prohibition if those funds are used to establish, sustain, or staff a DEI office or to employ or contract a DEI officer.

No—the law's prohibition may not apply to official action by local governments if the official action in question is both prohibited by SB 1134's DEI restrictions but expressly required by federal law or regulation. The critical distinction is between voluntary DEI programming funded by grants versus DEI-related activities that are required as a condition of the federal grant itself. The statute's federal compliance exception protects the latter: if a federal grant agreement requires certain DEI-related conduct as a condition of the award, the local government is exempt to the extent that conduct is mandated. However, if the DEI programming is merely permitted or encouraged by the grant — rather than required — the prohibition applies regardless of the funding source.

Each federal grant your client holds should be reviewed individually to determine whether any DEI-related conditions are mandatory (protected) or discretionary (prohibited). This analysis should be completed and documented before January 1, 2027.

To assist local government staff in evaluating individual grants, the following analytical framework applies:

- **Step 1 — Check the authorizing statute.** Does the federal statute creating the grant program mandate specific DEI-related conduct? Title VI of the Civil Rights Act, for example, prohibits discrimination in any program receiving federal financial assistance as a matter of statute — any grant recipient must certify compliance. That is a statutory mandate clearly within the exception.

- **Step 2 — Check the implementing regulations.** Do agency regulations promulgated under the authorizing statute impose specific DEI-related requirements? These carry statutory backing and are equally protected. The DOT's Disadvantaged Business

Enterprise program (49 C.F.R. Part 26) is a concrete example of a federal regulatory mandate clearly within the exception.

- **Step 3 — Check the Notice of Funding Opportunity or grant agreement.** Are the DEI conditions expressly required as conditions of award — meaning failure to comply results in ineligibility or clawback — or are they aspirational? Mandatory conditions tied to grant eligibility carry significantly stronger protection than encouraged practices.

- **Step 4 — Assess whether the condition has independent statutory or regulatory grounding.** Agency-discretionary grant terms added without clear statutory or regulatory authorization may not reliably qualify for the exception. Under the Trump Administration's EO 14173 and EO 14398, federal agencies are actively removing discretionary DEI conditions from grants, meaning conditions that existed in prior grant cycles may no longer appear in renewals or may conflict with current federal policy.

Every time a local government relies on the federal compliance exception, it should build a record, which includes: (a) obtain a written legal opinion identifying the specific statutory or regulatory basis; (b) document the mandatory nature of the condition; and (c) retain that documentation in a compliance file. This file becomes the defense exhibit if a resident files suit or the Governor considers suspension proceedings.

Question 8: How does this law interact with federal anti-discrimination obligations under Title VII, the ADA, and similar statutes?

Answer:

Federal anti-discrimination law compliance is expressly protected by the statute's most important exception: the law does not prohibit any official action by a county or municipality required for compliance with state or federal laws or regulations. This means:

- **Title VII of the Civil Rights Act of 1964:** Local governments remain obligated to maintain equal employment opportunity policies, investigate harassment and discrimination complaints, and take corrective action for documented discriminatory conduct. These functions may continue and must be preserved — but they should be re-housed in HR, legal, or risk management functions, not in a DEI office.

- **Americans with Disabilities Act (ADA) and Section 504:** ADA compliance obligations, including reasonable accommodation processes and accessibility programs, are fully protected.

- **EEO materials:** The statute expressly carves out equal opportunity and EEO materials designed to inform employees about the prohibition against discrimination based on protected status.

The practical compliance task is to carefully separate the legally required anti-discrimination functions from any DEI framing, branding, or programming layered on top of those functions. The former is protected; the latter is not.

Question 9: Are there gray areas that require particular caution?

Answer:

Yes — several categories of local government activity sit in legally uncertain territory and warrant individualized legal review before January 1, 2027:

- **Minority/women-owned business enterprise (MWBE) programs:** These programs are highly vulnerable. Unless required by a specific federal grant condition or federal law (e.g., the DOT's Disadvantaged Business Enterprise program), they likely constitute preferential treatment based on race or sex and fall within the prohibition.

- **Cultural competency training:** Any training program "designed or implemented with reference to" race, ethnicity, gender identity, or sexual orientation is covered, even if not labeled DEI. This includes unconscious bias training, anti-racism training, and similar programs.

- **Official proclamations:** Proclamations recognizing Pride Month, Hispanic Heritage Month, Women's History Month, Asian American and Pacific Islander Heritage Month, and similar observances not specifically designated in law as federal or state holidays or observances are at risk. The Black history and Florida African American heritage carve-out provides some protection for specific communities, but coverage is not uniform.

- **Nonprofit grants and partnerships:** Grants to or partnerships with nonprofits providing programs primarily serving LGBTQ+ communities, minority communities, or other populations defined by protected characteristics are high-risk, unless the nonprofit qualifies under the single-sex program exception or the services are mandated by federal law.

- **Community events and official sponsorships:** Official co-sponsorship or funding of events organized around protected characteristics (e.g., Pride festivals, cultural heritage festivals) is high-risk. The content-neutral event permit exception authorizes

the issuance of the permit itself for such events, but not official financial or promotional participation by the local government.

- **City-owned performing arts centers and museums:** If the venue is a city entity rather than an independent nonprofit, its programming constitutes official city action. Performances, exhibits, or programming "designed or implemented with reference to" a listed characteristic could fall within the definition of DEI "activity." Programming at independent nonprofit venues that receive city grants faces a related but distinct analysis — the contractor certification requirement applies to the nonprofit, but its programming decisions as an independent entity are not directly controlled by the statute.

- **Parade funding and viewpoint restrictions:** A city may not condition parade funding or permits on the viewpoints expressed by organizers or participants. Doing so would constitute an independent First Amendment violation entirely separate from SB 1134. The Supreme Court has established in *Rosenberger v. Rector*, 515 U.S. 819 (1995) and *Matal v. Tam*, 582 U.S. 218 (2017) that viewpoint-based funding restrictions violate the First Amendment. The statute's own content-neutral event permit exception signals that viewpoint-based permitting is unconstitutional.

- **Potential equal protection liability for selective heritage programming:** Cities that fund some cultural heritage events while denying others on the basis of the group's ethnic or national origin face equal protection claims from excluded groups. The law's selective carve-outs may force cities into an all-or-nothing position on cultural heritage programming. A uniform, content-neutral grant policy — applied consistently to all heritage-observance programming — is more legally defensible than selective funding based on whether a group's observance happens to be covered by a statutory exception.

- **Applying the statutory construction limiting principle:** Under the *ejusdem generis* and *noscitur a sociis* canons, the term "activities" in the third prong is most defensibly read to reach only organized, entity-sponsored, or officially-endorsed events, initiatives, workshops, campaigns, structured forums, or facilitated discussions — similar in institutional character to "training" or "programming" — that are intentionally designed or implemented with reference to a listed characteristic. Applying this framework, the following distinctions emerge:

    - Outside the statute's reach (under the limiting construction): Informal employee conversations about diversity topics; general workplace culture that is not the product of a deliberate design process; neutral programmatic activities (e.g., a job fair, a community meeting) that happen to attract or serve participants of a particular demographic; independent actions by individual employees without organizational endorsement or direction; and activities organized by non-city entities that the city merely permits through a content-neutral process.

- Within the statute's reach regardless of the limiting construction: Official DEI workshops or training sessions; formally organized awareness campaigns bearing the city's sponsorship or endorsement; structured employee resource groups based on a listed characteristic and established and officially recognized by the government entity; and deliberately designed outreach programs targeting participants based on a listed characteristic.

Question 10: What steps should local government take before January 1, 2027?

Answer:

The compliance window closes on January 1, 2027. The following priority actions are highly recommended:

- **Immediate: Comprehensive audit.** Inventory all DEI-related ordinances, resolutions, rules, regulations, programs, and policies. Inventory all employees and contractors with DEI-related job functions. Map all active contracts and grants for DEI-related conditions or requirements.

- **By mid-2026: Reclassify legally required functions.** Preserve all federally and state-mandated antidiscrimination functions — EEO, ADA, Title VII grievance processing, harassment investigation — but formally separate them from any DEI office or framing and re-house them in HR, legal, or risk management.

- **By mid-2026: Draft and adopt contractor certification form.** Section 287.139 requires pre-award certification from all contract and grant recipients. Nothing in SB 1134 prescribes a particular form/format by which contract certification must be accomplished. Therefore, adopting a standardized written certification form that reasonably expresses the scope of prohibitory language in §287.139 should suffice if developed and incorporated into procurement processes before January 1, 2027.

- **By mid-2026: Review and renegotiate DEI officer contracts.** Any existing contracts with DEI officers must be addressed before January 1, 2027, when the certification requirement becomes effective for such contracts.

- **By mid-2026: Grant-by-grant federal compliance analysis.** Each federal grant should be individually reviewed to determine which DEI-related activities are mandated (protected) versus discretionary (prohibited).

- **Before year-end: Formally repeal or amend void instruments.** Although existing DEI ordinances and policies are voided automatically on January 1, 2027, formal

repeal or amendment before that date is advisable to document compliance and reduce litigation exposure.

- **Before year-end: Official training for elected and appointed officials.** All officials must be briefed on the misfeasance risk and the scope of conduct covered, including public statements, official social media use, proclamations, and event participation in an official capacity.

Question 11: Should local governments defer compliance action now pending judicial review of the new law?

Answer:

No. While SB 1134 faces exposure to constitutional vulnerabilities — particularly under the First Amendment's protection against viewpoint-based speech restrictions and the due process vagueness doctrine — relying on anticipated litigation as a compliance strategy is not advisable for two reasons:

- **The misfeasance provision is self-executing and does not require a court judgment.** The Governor may suspend a local official for misfeasance or malfeasance under Article IV, § 7 of the Florida Constitution by executive order, without any prior judicial proceeding. An official in violation of SB 1134 could be suspended before any court has had the opportunity to rule on the statute's constitutionality.

- **The private right of action is available from day one.** Any resident may file suit on January 1, 2027. Even if the local government ultimately prevails, defending litigation is costly and resource intensive. Compliance — even regarding provisions that may later be enjoined — is the lower-risk posture in the short term.

For historical context, the Stop WOKE Act's higher education and workplace provisions were ultimately enjoined by federal courts on First Amendment grounds, and SB 1134's definitional sweep presents similar vulnerabilities. However, that litigation took years to resolve, and in the interim, officials and institutions that did not comply faced real legal exposure.

Question 12: What is the role of the Florida AG's January 2026 opinion (AGO 2026-02) in this analysis?

Answer:

AGO 2026-02, issued by Attorney General Uthmeier on January 19, 2026, opined that Florida statutes mandating discrimination based on race — through racial preferences, race-based classifications, or racial quotas — are presumptively unconstitutional under the Fourteenth Amendment and Article I, § 2 of the Florida Constitution, applying strict scrutiny under *SFFA*.

The opinion has a nuanced relevance to SB 1134 compliance:

- **What it supports:** The opinion provides the constitutional rationale underlying SB 1134 — that affirmative, race-conscious government action is presumptively unconstitutional. It reinforces the argument that local DEI programs involving racial preferences were legally questionable even before SB 1134 was enacted.

- **What it does not do:** The opinion does not address the constitutional validity of SB 1134 itself. The opinion concerns laws that require race-based action; SB 1134 is a law that prohibits DEI activity broadly. These are distinct legal questions.

Question 13: Since SB 1134 does not expressly use the words "waiver of sovereign immunity," can a city assert sovereign immunity as a defense from resident lawsuits?

Answer:

No. Sovereign immunity shields government entities from suit ***unless*** the Legislature consents. That consent need not use the precise phrase "waiver of sovereign immunity." When the Legislature creates a statutory cause of action against a governmental entity, as it has done in SB 1134, it simultaneously provides the consent to sue that sovereign immunity would otherwise bar.

The enrolled bill text authorizes "an action in circuit court" brought "by a resident of the county or municipality against a county or municipality that violates this section" and expressly authorizes the court to award "declaratory and injunctive relief, damages, and costs." This is a legislatively created right to sue with explicit remedies. It constitutes a

statutory waiver of sovereign immunity for claims brought under this provision, regardless of the absence of that precise phrase.

Importantly, this SB 1134 cause of action is entirely separate from the limited tort waiver under § 768.28, Florida Statutes, which covers only negligence and intentional torts by government employees and is subject to per-person and per-incident damages caps. An SB 1134 plaintiff brings a statutory civil action, not a tort claim. The § 768.28 damages caps and pre-suit notice requirements do not apply. Cities should not assume those existing procedural protections will shield them from SB 1134 claims.

Question 14: Does the bill give a city any opportunity to address or cure a violation before a lawsuit is filed or proceeds?

Answer:

No. SB 1134 contains no pre-suit notice requirement, no cure period, and no administrative exhaustion requirement. Under Florida's limited waiver of sovereign immunity for tort claims (§ 768.28, Fla. Stat.), a plaintiff must provide the government with advance written notice of a claim and wait a specified period before filing suit, giving the government an opportunity to investigate and potentially resolve the dispute. SB 1134 creates a separate statutory cause of action that does not reference § 768.28 and imposes no equivalent pre-suit requirements.

A resident may file suit on January 1, 2027 — the effective date — without giving the city any advance notice. The first the city may know of a challenge is when it is served with a complaint. This makes the January 1, 2027, compliance deadline a hard trigger date: there is no grace period and no opportunity to cure after a lawsuit is filed before the litigation clock begins running. Cities must complete their compliance work before that date, not in response to a demand letter or lawsuit afterward.

Question 15: How does SB 1134 interact with existing federal consent decrees that require specific training or anti-discrimination programs?

Answer:

Federal consent decrees are court orders — they constitute binding federal law on the parties, entered by a federal court exercising its equitable authority. A local government subject to a federal consent decree that requires specific DEI-related training, policy development, or programming is required by federal court order to perform that conduct. This places consent decree compliance squarely within SB 1134's federal law compliance exception: "This section does not prohibit any official action by a county or municipality required for compliance with state or federal laws or regulations."

Local governments subject to existing consent decrees should: (a) identify every training, policy, or programmatic obligation arising from the decree; (b) obtain a written legal opinion confirming that each such obligation is consent-decree-mandated rather than merely encouraged or aspirational; and (c) retain that documentation in the compliance file. This constitutes the strongest available defense to any SB 1134 challenge directed at consent-decree compliance activities.

Question 16: Can indemnification provisions contained within or added to vendor contracts adequately protect the city from SB 1134 claims?

Answer:

- Existing contracts with vendors or contractors that lack SB 1134 compliance provisions should be audited and updated. Cities should add: (a) a representation and warranty that the contractor complies with § 287.139; (b) a covenant to flow down the DEI restriction to all subcontractors using local government funds; (c) an indemnification provision requiring the contractor to hold the city harmless for any SB 1134 claim arising from the contractor's or its subcontractors' failure to comply; and (d) audit rights allowing the city to verify compliance.