

<b>Tab 1</b>	<b>SB 1308 by Perry; (Identical to H 01149) Environmental Regulation</b>						
832374	A	S	RCS	EP, Perry	Delete L.117 - 135:	01/22 02:07 PM	

<b>Tab 2</b>	<b>SB 1612 by Rader (CO-INTRODUCERS) Book; (Identical to H 01211) Airboat Regulation</b>						
810164	A	S	RCS	EP, Rader	Delete L.32 - 33:	01/22 02:07 PM	

<b>Tab 3</b>	<b>SB 1402 by Simmons (CO-INTRODUCERS) Galvano; (Identical to H 07043) State Assumption of Federal Section 404 Dredge and Fill Permitting Authority</b>						
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<b>Tab 4</b>	<b>SB 1664 by Simmons; Onsite Sewage Treatment and Disposal Systems</b>						
499170	D	S	RCS	EP, Simmons	Delete everything after	01/22 02:07 PM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**ENVIRONMENTAL PRESERVATION AND CONSERVATION**  
**Senator Bradley, Chair**  
**Senator Stewart, Vice Chair**

**MEETING DATE:** Monday, January 22, 2018  
**TIME:** 12:30—2:30 p.m.  
**PLACE:** *Mallory Horne Committee Room, 37 Senate Office Building*

**MEMBERS:** Senator Bradley, Chair; Senator Stewart, Vice Chair; Senators Bean, Book, Farmer, Flores, Hukill, Hutson, Simmons, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1308</b> Perry (Identical H 1149)	Environmental Regulation; Revising the required provisions of the water resource implementation rule; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; prohibiting counties and municipalities from requiring the recycling of contaminated recyclable material, etc.  EP     01/22/2018 Fav/CS AEN AP	Fav/CS Yeas 9 Nays 1
2	<b>SB 1612</b> Rader (Identical H 1211)	Airboat Regulation; Citing this act as "Ellie's Law"; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire, etc.  EP     01/22/2018 Fav/CS AEN AP	Fav/CS Yeas 10 Nays 0
3	<b>SB 1402</b> Simmons (Identical H 7043)	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority; Defining the term "state assumed waters"; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; requiring the department to adopt rules to create an expedited permit review process, etc.  EP     01/22/2018 Favorable AEN AP	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Environmental Preservation and Conservation  
Monday, January 22, 2018, 12:30—2:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1664</b> Simmons	Onsite Sewage Treatment and Disposal Systems; Requiring the Department of Environmental Protection and other entities, as part of a basin management action plan, to develop onsite sewage treatment and disposal system remediation plans and public wastewater treatment plant remediation plans under certain conditions; specifying that the installation, repair, modification, or upgrade of certain onsite sewage treatment and disposal systems must conform to remediation plan requirements, etc.	Fav/CS Yeas 10 Nays 0
		EP     01/22/2018 Fav/CS AEN AP	

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Other Related Meeting Documents

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**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: CS/SB 1308

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: January 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Fav/CS
2.			AEN	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires DEP to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

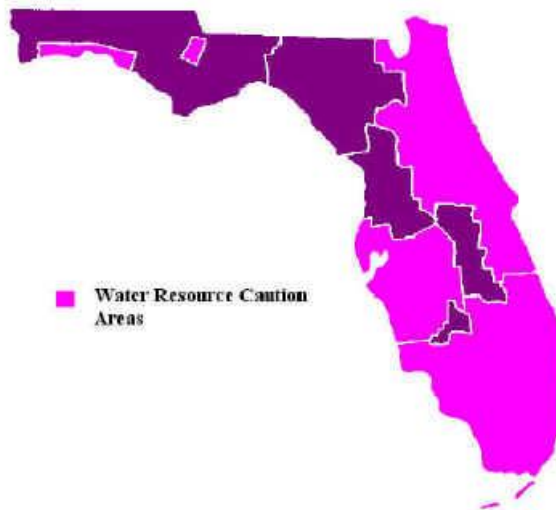
The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring further verification from DEP for all of the activities and projects exempted from ERP requirements.

## II. Present Situation:

### Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.<sup>1</sup> Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.<sup>2</sup> In Florida, groundwater accounts for about 90 percent of public and domestic water supply.<sup>3</sup> The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.<sup>4</sup>



Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.<sup>5</sup> The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.<sup>6</sup> The WMDs regulate consumptive use of water through a permitting process.<sup>7</sup> WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water

Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code, requires the reuse of reclaimed water in these areas.<sup>8</sup>

### Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an

<sup>1</sup> Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 14.

<sup>4</sup> DEP, *Aquifers*, available at <https://fldep.dep.state.fl.us/swapp/Aquifer.asp#> (last visited January 16, 2018).

<sup>5</sup> Section 373.036, F.S.

<sup>6</sup> Section 373.042, F.S.

<sup>7</sup> Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.

<sup>8</sup> *See also* s. 403.064(2), F.S.

applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use;”<sup>9</sup>
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.<sup>10</sup>

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.<sup>11</sup> If neither application is a renewal, preference is given to the applicant nearest the source.<sup>12</sup>

### Reclaimed Water

Section 373.019(17), F.S., defines the term “reclaimed water” as “water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.” Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by DEP.<sup>13</sup> In 2016, a total of 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.<sup>14</sup> The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.<sup>15</sup> The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.<sup>16</sup> Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.<sup>17</sup> Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.<sup>18</sup> Approximately 43 wastewater treatment facilities do not provide reuse of any kind.<sup>19</sup> Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, ch. 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse

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<sup>9</sup> Section 373.019(16), F.S., defines reasonable-beneficial use as, “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.

<sup>10</sup> Fla. Admin. Code R. 62-40.410(1).

<sup>11</sup> Section 373.233(2), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> DEP, *2016 Reuse Inventory*, available at [https://floridadep.gov/sites/default/files/2016\\_reuse-report\\_0.pdf](https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf) (last visited January 17, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater treatment facilities with permitted capacities of 0.1 million gallons per day or greater).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*, noting that “[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.).”

<sup>19</sup> *Id.* at 3.

feasibility study before receiving a domestic wastewater permit.<sup>20</sup> Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

### **Discharges of Reclaimed Water into Surface Waters**

DEP may issue permits for backup discharges. A “backup discharge” is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.<sup>21</sup>

### **Impact Offsets and Substitution Credits**

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.<sup>22</sup> DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.<sup>23</sup> Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater which then allows a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.<sup>24</sup> CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.<sup>25</sup>

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<sup>20</sup> *Id.* at 20

<sup>21</sup> Section 403.086, F.S.

<sup>22</sup> Section 373.036(1), F.S.

<sup>23</sup> Fla. Admin. Code R. 62-40.416.

<sup>24</sup> Section 373.250(5), F.S.

<sup>25</sup> Fla. Admin. Code R. 62-40.416.

## Ground Water Regulations

DEP regulates underground injection;<sup>26</sup> water well permitting;<sup>27</sup> water well construction;<sup>28</sup> source water and wellhead protection programs;<sup>29</sup> and ground water classes, standards, and monitoring.<sup>30</sup> DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.<sup>31</sup> DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground water standards are equivalent to the drinking water standards. By definition, a violation of any ground water standard or criterion constitutes pollution.<sup>32</sup>

## The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.<sup>33</sup> Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.<sup>34</sup> Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.<sup>35</sup> These statutes direct DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in ch. 62-550 of the Florida Administrative Code.

## Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.<sup>36</sup> Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.<sup>37</sup>

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<sup>26</sup> Fla. Admin. Code R. Ch. 62-528.

<sup>27</sup> Fla. Admin. Code R. Ch. 62-532.

<sup>28</sup> Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)

<sup>29</sup> Fla. Admin. Code R. Ch. 62-521.

<sup>30</sup> Fla. Admin. Code R. Ch. 62-520

<sup>31</sup> DEP, *Aquifer Protection Program- UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited January 19, 2018).

<sup>32</sup> Florida Admin. Code s. 62-520.310.

<sup>33</sup> The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).

<sup>34</sup> U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act*, available at <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act> (last visited January 17, 2018).

<sup>35</sup> Sections 403.850-403.864, F.S.

<sup>36</sup> Section 403.706(1), F.S.

<sup>37</sup> Section 403.706(2), F.S.



Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.<sup>38</sup>

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.<sup>39</sup>

“Municipal solid waste” includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.<sup>40</sup> DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.<sup>41</sup>

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional

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<sup>38</sup> Section 403.706(2)(f), F.S.

<sup>39</sup> Section 403.706(3), F.S.

<sup>40</sup> Section 403.706(5), F.S.

<sup>41</sup> Section 403.706(6), F.S.

establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.<sup>42</sup>

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.<sup>43</sup>

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.<sup>44</sup>

### **Florida's Recycling Goal**

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.<sup>45</sup> DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.<sup>46</sup>

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.<sup>47</sup>

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside

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<sup>42</sup> Section 403.706(21), F.S.

<sup>43</sup> Section 403.7046(3), F.S.

<sup>44</sup> Section 403.7046(3)(a), F.S.

<sup>45</sup> Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5

[https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1\\_0\\_0.pdf](https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf) (last visited January 17, 2018).

<sup>46</sup> DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited January 17, 2018).

<sup>47</sup> DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5

[https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1\\_0\\_0.pdf](https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf) (last visited January 17, 2018).

recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.<sup>48</sup>

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.<sup>49</sup>

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.<sup>50</sup>

### **Exceptions to Requirements for Environmental Permits**

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems,

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<sup>48</sup> *Id.* at 11.

<sup>49</sup> *Id.* at 13.

<sup>50</sup> *Id.*

dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).<sup>51</sup> However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.<sup>52</sup> Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.<sup>53</sup> Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.<sup>54</sup> Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.<sup>55</sup> Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.<sup>56</sup>

### III. Effect of Proposed Changes:

#### Impact Offsets and Substitution Credits

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

#### Memorandum of Agreement

The bill includes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must

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<sup>51</sup> Fla. Admin. Code R. 62-330.010.

<sup>52</sup> Section 403.813, F.S.

<sup>53</sup> Fla. Admin. Code R. 62-330.50.

<sup>54</sup> Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.

<sup>55</sup> Section 403.813(1)(d), F.S.

<sup>56</sup> Section 403.813(1), F.S.

provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

### **Contaminated Recyclable Material**

The bill provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
  - A definition of the term “contaminated recyclable material” that is appropriate for the local community, based on the available markets for recyclable material.
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill provides that “residential recycling collector” means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

### **ERP Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from DEP**

The bill revises the ERP exemption for the repair or replacement of existing docks and piers. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from

the requirement to obtain a permit, a local government may not require further verification from DEP.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county and municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material according to certain restrictions and criteria specified in the bill. This may affect the revenue stream or the costs of operating recycling or waste collection programs for counties and municipalities. However, an exemption to the mandates provision may apply if revenue stream and cost effects result in insignificant fiscal impacts to local governments. These effects are indeterminate at this time.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Indeterminate.

##### **C. Government Sector Impact:**

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on DEP as a result of the costs of rulemaking to develop criteria for use of impact offsets or substitution credits. The bill may also have indeterminate negative fiscal impacts on DEP and the WMDs as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 373.250, 403.064, 403.706, and 403.813 of the Florida Statutes.

**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 Environmental Preservation and Conservation on January 22, 2018:**

The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that “residential recycling collector” means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
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The Committee on Environmental Preservation and Conservation  
(Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 117 - 135  
and insert:

(22) Counties and municipalities shall address the  
contamination of recyclable material in contracts for the  
collection, transportation, and processing of residential  
recyclable material based upon the following:

(a) A residential recycling collector may not be required  
to collect or transport contaminated recyclable material. As



832374

11 used in this subsection, "residential recycling collector" means  
12 a for-profit business entity that collects and transports  
13 residential recyclable material on behalf of a county or  
14 municipality.

15 (b) A materials recovery facility may not be required to  
16 process contaminated recyclable material.

17 (c) Each contract between a residential recycling collector  
18 and a county or municipality for the collection or transport of  
19 residential recyclable material, and each request for proposal  
20 for residential recyclable material, must define the term  
21 "contaminated recyclable material" in a manner that is  
22 appropriate for the local community, based on the available  
23 markets for recyclable material. The contract and request for  
24 proposal must include:

25 1. The respective strategies and obligations of the county  
26 or municipality and the collector to reduce the amount of  
27 contaminated recyclable material being collected;

28 2. The procedures for identifying, documenting, managing,  
29 and rejecting residential recycling containers, carts, or bins  
30 that contain contaminated recyclable material;

31 3. The remedies that will be used if a container, cart, or  
32 bin contains contaminated recyclable material; and

33 4. The education and enforcement measures that will be used  
34 to reduce the amount of contaminated recyclable material.

35 (d) Each contract between a materials recovery facility and  
36 a county or municipality for processing residential recyclable  
37 material must define the term "contaminated recyclable material"  
38 in a manner that is appropriate for the local community, based  
39 on the available markets for recyclable material. The contract



40 must include:

41 1. The respective strategies and obligations of the parties  
42 to reduce the amount of contaminated recyclable material being  
43 processed;

44 2. The procedures for identifying, documenting, managing,  
45 and rejecting residential recycling containers or loads that  
46 contain contaminated recyclable material; and

47 3. The remedies that will be used if a container or load  
48 contains contaminated recyclable material.

49 (e) This subsection shall apply to each contract between a  
50 municipality or county and a residential recycling collector or  
51 materials recovery facility executed or renewed after the  
52 effective date of this act.

53  
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete lines 17 - 23

57 and insert:

58 amending s. 403.706, F.S.; requiring counties and  
59 municipalities to address contamination of recyclable  
60 material in specified contracts; prohibiting counties  
61 and municipalities from requiring the collection or  
62 transport of contaminated recyclable material by  
63 residential recycling collectors; defining the term  
64 "residential recycling collector"; specifying required  
65 contract provisions in residential recycling collector  
66 and materials recovery facility contracts with  
67 counties and municipalities; providing

By Senator Perry

8-01279-18

20181308\_\_

1                   A bill to be entitled  
2       An act relating to environmental regulation; amending  
3       s. 373.250, F.S.; deleting an obsolete provision;  
4       providing examples of reclaimed water use that may  
5       create an impact offset; revising the required  
6       provisions of the water resource implementation rule;  
7       amending s. 403.064, F.S.; revising legislative  
8       findings; requiring the Department of Environmental  
9       Protection and the water management districts to  
10      develop and enter into a memorandum of agreement  
11      providing for a coordinated review of any reclaimed  
12      water project requiring a reclaimed water facility  
13      permit, an underground injection control permit, and a  
14      consumptive use permit; specifying the required  
15      provisions of such memorandum; specifying the date by  
16      which the memorandum must be developed and executed;  
17      amending s. 403.706, F.S.; prohibiting counties and  
18      municipalities from requiring the recycling of  
19      contaminated recyclable material; providing that  
20      counties, municipalities, and recyclable material  
21      contractors are not required to collect, transport, or  
22      process contaminated recyclable material; defining the  
23      term "contaminated recyclable material"; providing  
24      applicability; amending s. 403.813, F.S.; providing  
25      that a local government may not require further  
26      verification from the department for certain projects;  
27      revising the types of dock and pier replacements and  
28      repairs that are exempt from such verification and  
29      certain permitting requirements; providing a directive

8-01279-18

20181308\_\_

30 to the Division of Law Revision and Information;  
31 providing an effective date.  
32

33 Be It Enacted by the Legislature of the State of Florida:  
34

35 Section 1. Subsection (5) of section 373.250, Florida  
36 Statutes, is amended to read:

37 373.250 Reuse of reclaimed water.-

38 (5) (a) ~~No later than October 1, 2012, the department shall~~  
39 ~~initiate rulemaking to adopt revisions to~~ The water resource  
40 implementation rule, as defined in s. 373.019(25), must ~~which~~  
41 ~~shall~~ include:

42 1. Criteria for the use of a proposed impact offset derived  
43 from the use of reclaimed water when a water management district  
44 evaluates an application for a consumptive use permit. As used  
45 in this subparagraph, the term "impact offset" means the use of  
46 reclaimed water to reduce or eliminate a harmful impact that has  
47 occurred or would otherwise occur as a result of other surface  
48 water or groundwater withdrawals. Examples of reclaimed water  
49 use that may create an impact offset include, but are not  
50 limited to, the use of reclaimed water to:

51 a. Prevent or stop further saltwater intrusion;  
52 b. Raise aquifer levels;  
53 c. Improve the water quality of an aquifer; or  
54 d. Augment surface water to increase the quantity of water  
55 available for water supply.

56 2. Criteria for the use of substitution credits where a  
57 water management district has adopted rules establishing  
58 withdrawal limits from a specified water resource within a

8-01279-18

20181308\_\_

59 defined geographic area. As used in this subparagraph, the term  
60 "substitution credit" means the use of reclaimed water to  
61 replace all or a portion of an existing permitted use of  
62 resource-limited surface water or groundwater, allowing a  
63 different user or use to initiate a withdrawal or increase its  
64 withdrawal from the same resource-limited surface water or  
65 groundwater source provided that the withdrawal creates no net  
66 adverse impact on the limited water resource or creates a net  
67 positive impact if required by water management district rule as  
68 part of a strategy to protect or recover a water resource.

69 3. Criteria by which an impact offset or substitution  
70 credit may be applied to the issuance, renewal, or extension of  
71 the utility's or another user's consumptive use permit or may be  
72 used to address additional water resource constraints imposed  
73 through the adoption of a recovery or prevention strategy under  
74 s. 373.0421.

75 (b) Within 60 days after the final adoption by the  
76 department of the revisions to the water resource implementation  
77 rule required under paragraph (a), each water management  
78 district must ~~shall~~ initiate rulemaking to incorporate those  
79 revisions by reference into the rules of the district.

80 Section 2. Subsection (1) of section 403.064, Florida  
81 Statutes, is amended, and subsection (17) is added to that  
82 section, to read:

83 403.064 Reuse of reclaimed water.—

84 (1) The encouragement and promotion of water conservation,  
85 and reuse of reclaimed water, as defined by the department, are  
86 state objectives and are considered to be in the public  
87 interest. The Legislature finds that the reuse of reclaimed

8-01279-18

20181308\_\_

88 water, including reuse through aquifer recharge, is a critical  
89 component of meeting the state's existing and future water  
90 supply needs while sustaining natural systems. The Legislature  
91 further finds that for those wastewater treatment plants  
92 permitted and operated under an approved reuse program by the  
93 department, the reclaimed water shall be considered  
94 environmentally acceptable and not a threat to public health and  
95 safety. The Legislature encourages the development of incentive-  
96 based programs for reuse implementation.

97 (17) The department and the water management districts  
98 shall develop and enter into a memorandum of agreement providing  
99 for a coordinated review of any reclaimed water project  
100 requiring a reclaimed water facility permit, an underground  
101 injection control permit, and a consumptive use permit. The  
102 memorandum of agreement must provide that the coordinated review  
103 is performed only if the applicant for such permits requests a  
104 coordinated review. The goal of the coordinated review is to  
105 share information, avoid requesting the applicant to submit  
106 redundant information, and ensure, to the extent feasible, a  
107 harmonized review of the reclaimed water project under these  
108 various permitting programs, including the use of a proposed  
109 impact offset or substitution credit in accordance with s.  
110 373.250(5). The department and the water management districts  
111 must develop and execute such memorandum of agreement no later  
112 than December 1, 2018.

113 Section 3. Present subsection (22) of section 403.706,  
114 Florida Statutes, is renumbered as subsection (23), and a new  
115 subsection (22) is added to that section, to read:

116 403.706 Local government solid waste responsibilities.—

8-01279-18

20181308\_\_

117 (22) Upon the effective date of this act and except as  
118 provided in paragraph (d):

119 (a) A county or municipality may not require the recycling  
120 of contaminated recyclable material.

121 (b) A county, municipality, or recyclable material  
122 contractor is not required to collect, transport, or process  
123 contaminated recyclable material.

124 (c) As used in this subsection, the term "contaminated  
125 recyclable material" means recyclable material having 15 percent  
126 or more, measured by weight or volume, of municipal solid waste  
127 or nonrecyclable material comingled with recyclable material.

128 (d) This subsection does not apply to a contract between a  
129 county or municipality and a recyclable material contractor for  
130 the collection, transportation, or processing of recyclable  
131 material that includes stated terms allowing contamination  
132 percentages of 15 percent or more and that was executed before  
133 the effective date of this act. This exclusion continues until  
134 the remaining term of the existing contract expires or until  
135 July 1, 2023, whichever occurs first.

136 Section 4. Subsection (1) of section 403.813, Florida  
137 Statutes, is amended to read:

138 403.813 Permits issued at district centers; exceptions.—

139 (1) A permit is not required under this chapter, chapter  
140 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
141 chapter 25270, 1949, Laws of Florida, and a local government may  
142 not require further verification from the department, for  
143 activities associated with the following types of projects;  
144 however, except as otherwise provided in this subsection, this  
145 subsection does not relieve an applicant from any requirement to



8-01279-18

20181308\_\_

146 obtain permission to use or occupy lands owned by the Board of  
147 Trustees of the Internal Improvement Trust Fund or a water  
148 management district in its governmental or proprietary capacity  
149 or from complying with applicable local pollution control  
150 programs authorized under this chapter or other requirements of  
151 county and municipal governments:

152 (a) The installation of overhead transmission lines, having  
153 ~~with~~ support structures that ~~which~~ are not constructed in waters  
154 of the state and which do not create a navigational hazard.

155 (b) The installation and repair of mooring pilings and  
156 dolphins associated with private docking facilities or piers and  
157 the installation of private docks, piers, and recreational  
158 docking facilities, or piers and recreational docking facilities  
159 of local governmental entities when the local governmental  
160 entity's activities will not take place in any manatee habitat,  
161 any of which docks:

162 1. Has 500 square feet or less of over-water surface area  
163 for a dock ~~which is~~ located in an area designated as Outstanding  
164 Florida Waters or 1,000 square feet or less of over-water  
165 surface area for a dock ~~which is~~ located in an area that ~~which~~  
166 is not designated as Outstanding Florida Waters;

167 2. Is constructed on or held in place by pilings or is a  
168 floating dock ~~which is~~ constructed so as not to involve filling  
169 or dredging other than that necessary to install the pilings;

170 3. May ~~Shall~~ not substantially impede the flow of water or  
171 create a navigational hazard;

172 4. Is used for recreational, noncommercial activities  
173 associated with the mooring or storage of boats and boat  
174 paraphernalia; and

8-01279-18

20181308\_\_

175           5. Is the sole dock constructed pursuant to this exemption  
176 as measured along the shoreline for a distance of 65 feet,  
177 unless the parcel of land or individual lot as platted is less  
178 than 65 feet in length along the shoreline, in which case there  
179 may be one exempt dock allowed per parcel or lot.

180  
181 ~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department  
182 from taking appropriate enforcement action pursuant to this  
183 chapter to abate or prohibit any activity otherwise exempt from  
184 permitting pursuant to this paragraph if the department can  
185 demonstrate that the exempted activity has caused water  
186 pollution in violation of this chapter.

187           (c) The installation and maintenance to design  
188 specifications of boat ramps on artificial bodies of water where  
189 navigational access to the proposed ramp exists or the  
190 installation of boat ramps open to the public in any waters of  
191 the state where navigational access to the proposed ramp exists  
192 and where the construction of the proposed ramp will be less  
193 than 30 feet wide and will involve the removal of less than 25  
194 cubic yards of material from the waters of the state, and the  
195 maintenance to design specifications of such ramps; however, the  
196 material to be removed shall be placed upon a self-contained  
197 upland site so as to prevent the escape of the spoil material  
198 into the waters of the state.

199           (d) The replacement or repair of existing docks and piers,  
200 except that fill material may not be used and the replacement or  
201 repaired dock or pier must be in approximately the same location  
202 and no larger in size than the existing dock or pier, and no  
203 additional aquatic resources may be adversely and permanently

8-01279-18

20181308\_\_

204 impacted by such replacement or repair ~~the same location and of~~  
205 ~~the same configuration and dimensions as the dock or pier being~~  
206 ~~replaced or repaired.~~ This does not preclude the use of  
207 different construction materials or minor deviations to allow  
208 upgrades to current structural and design standards.

209 (e) The restoration of seawalls at their previous locations  
210 or upland of, or within 18 inches waterward of, their previous  
211 locations. However, this may ~~shall~~ not affect the permitting  
212 requirements of chapter 161, and department rules shall clearly  
213 indicate that this exception does not constitute an exception  
214 from the permitting requirements of chapter 161.

215 (f) The performance of maintenance dredging of existing  
216 manmade canals, channels, intake and discharge structures, and  
217 previously dredged portions of natural water bodies within  
218 drainage rights-of-way or drainage easements which have been  
219 recorded in the public records of the county, where the spoil  
220 material is to be removed and deposited on a self-contained,  
221 upland spoil site which will prevent the escape of the spoil  
222 material into the waters of the state, provided that no more  
223 dredging is to be performed than is necessary to restore the  
224 canals, channels, and intake and discharge structures, and  
225 previously dredged portions of natural water bodies, to original  
226 design specifications or configurations, provided that the work  
227 is conducted in compliance with s. 379.2431(2)(d), provided that  
228 no significant impacts occur to previously undisturbed natural  
229 areas, and provided that control devices for return flow and  
230 best management practices for erosion and sediment control are  
231 utilized to prevent bank erosion and scouring and to prevent  
232 turbidity, dredged material, and toxic or deleterious substances

8-01279-18

20181308\_\_

233 from discharging into adjacent waters during maintenance  
234 dredging. Further, for maintenance dredging of previously  
235 dredged portions of natural water bodies within recorded  
236 drainage rights-of-way or drainage easements, an entity that  
237 seeks an exemption must notify the department or water  
238 management district, as applicable, at least 30 days before  
239 ~~prior to~~ dredging and provide documentation of original design  
240 specifications or configurations where such exist. This  
241 exemption applies to all canals and previously dredged portions  
242 of natural water bodies within recorded drainage rights-of-way  
243 or drainage easements constructed before ~~prior to~~ April 3, 1970,  
244 and to those canals and previously dredged portions of natural  
245 water bodies constructed on or after April 3, 1970, pursuant to  
246 all necessary state permits. This exemption does not apply to  
247 the removal of a natural or manmade barrier separating a canal  
248 or canal system from adjacent waters. When no previous permit  
249 has been issued by the Board of Trustees of the Internal  
250 Improvement Trust Fund or the United States Army Corps of  
251 Engineers for construction or maintenance dredging of the  
252 existing manmade canal or intake or discharge structure, such  
253 maintenance dredging shall be limited to a depth of no more than  
254 5 feet below mean low water. The Board of Trustees of the  
255 Internal Improvement Trust Fund may fix and recover from the  
256 permittee an amount equal to the difference between the fair  
257 market value and the actual cost of the maintenance dredging for  
258 material removed during such maintenance dredging. However, no  
259 charge shall be exacted by the state for material removed during  
260 such maintenance dredging by a public port authority. The  
261 removing party may subsequently sell such material; however,

8-01279-18

20181308\_\_

262 proceeds from such sale that exceed the costs of maintenance  
263 dredging shall be remitted to the state and deposited in the  
264 Internal Improvement Trust Fund.

265 (g) The maintenance of existing insect control structures,  
266 dikes, and irrigation and drainage ditches, provided that spoil  
267 material is deposited on a self-contained, upland spoil site  
268 which will prevent the escape of the spoil material into waters  
269 of the state. In the case of insect control structures, if the  
270 cost of using a self-contained upland spoil site is so  
271 excessive, as determined by the Department of Health, pursuant  
272 to s. 403.088(1), that it will inhibit proposed insect control,  
273 then-existing spoil sites or dikes may be used, upon  
274 notification to the department. In the case of insect control  
275 where upland spoil sites are not used pursuant to this  
276 exemption, turbidity control devices shall be used to confine  
277 the spoil material discharge to that area previously disturbed  
278 when the receiving body of water is used as a potable water  
279 supply, is designated as shellfish harvesting waters, or  
280 functions as a habitat for commercially or recreationally  
281 important shellfish or finfish. In all cases, no more dredging  
282 is to be performed than is necessary to restore the dike or  
283 irrigation or drainage ditch to its original design  
284 specifications.

285 (h) The repair or replacement of existing functional pipes  
286 or culverts the purpose of which is the discharge or conveyance  
287 of stormwater. In all cases, the invert elevation, the diameter,  
288 and the length of the culvert may ~~shall~~ not be changed. However,  
289 the material used for the culvert may be different from the  
290 original.

8-01279-18

20181308\_\_

291 (i) The construction of private docks of 1,000 square feet  
292 or less of over-water surface area and seawalls in artificially  
293 created waterways where such construction will not violate  
294 existing water quality standards, impede navigation, or affect  
295 flood control. This exemption does not apply to the construction  
296 of vertical seawalls in estuaries or lagoons unless the proposed  
297 construction is within an existing manmade canal where the  
298 shoreline is currently occupied in whole or part by vertical  
299 seawalls.

300 (j) The construction and maintenance of swales.

301 (k) The installation of aids to navigation and buoys  
302 associated with such aids, provided the devices are marked  
303 pursuant to s. 327.40.

304 (l) The replacement or repair of existing open-trestle foot  
305 bridges and vehicular bridges that are 100 feet or less in  
306 length and two lanes or less in width, provided that no more  
307 dredging or filling of submerged lands is performed other than  
308 that which is necessary to replace or repair pilings and that  
309 the structure to be replaced or repaired is the same length, the  
310 same configuration, and in the same location as the original  
311 bridge. No debris from the original bridge shall be allowed to  
312 remain in the waters of the state.

313 (m) The installation of subaqueous transmission and  
314 distribution lines laid on, or embedded in, the bottoms of  
315 waters in the state, except in Class I and Class II waters and  
316 aquatic preserves, provided no dredging or filling is necessary.

317 (n) The replacement or repair of subaqueous transmission  
318 and distribution lines laid on, or embedded in, the bottoms of  
319 waters of the state.

8-01279-18

20181308\_\_

320 (o) The construction of private seawalls in wetlands or  
321 other surface waters where such construction is between and  
322 adjoins at both ends existing seawalls; follows a continuous and  
323 uniform seawall construction line with the existing seawalls; is  
324 no more than 150 feet in length; and does not violate existing  
325 water quality standards, impede navigation, or affect flood  
326 control. However, in estuaries and lagoons the construction of  
327 vertical seawalls is limited to the circumstances and purposes  
328 stated in s. 373.414(5)(b)1.-4. This paragraph does not affect  
329 the permitting requirements of chapter 161, and department rules  
330 must clearly indicate that this exception does not constitute an  
331 exception from the permitting requirements of chapter 161.

332 (p) The restoration of existing insect control impoundment  
333 dikes which are less than 100 feet in length. Such impoundments  
334 shall be connected to tidally influenced waters for 6 months  
335 each year beginning September 1 and ending February 28 if  
336 feasible or operated in accordance with an impoundment  
337 management plan approved by the department. A dike restoration  
338 may involve no more dredging than is necessary to restore the  
339 dike to its original design specifications. For the purposes of  
340 this paragraph, restoration does not include maintenance of  
341 impoundment dikes of operating insect control impoundments.

342 (q) The construction, operation, or maintenance of  
343 stormwater management facilities which are designed to serve  
344 single-family residential projects, including duplexes,  
345 triplexes, and quadruplexes, if they are less than 10 acres  
346 total land and have less than 2 acres of impervious surface and  
347 if the facilities:

348 1. Comply with all regulations or ordinances applicable to

8-01279-18

20181308\_\_

349 stormwater management and adopted by a city or county;

350 2. Are not part of a larger common plan of development or  
351 sale; and

352 3. Discharge into a stormwater discharge facility exempted  
353 or permitted by the department under this chapter which has  
354 sufficient capacity and treatment capability as specified in  
355 this chapter and is owned, maintained, or operated by a city,  
356 county, special district with drainage responsibility, or water  
357 management district; however, this exemption does not authorize  
358 discharge to a facility without the facility owner's prior  
359 written consent.

360 (r) The removal of aquatic plants, the removal of tussocks,  
361 the associated replanting of indigenous aquatic plants, and the  
362 associated removal from lakes of organic detrital material when  
363 such planting or removal is performed and authorized by permit  
364 or exemption granted under s. 369.20 or s. 369.25, provided  
365 that:

366 1. Organic detrital material that exists on the surface of  
367 natural mineral substrate shall be allowed to be removed to a  
368 depth of 3 feet or to the natural mineral substrate, whichever  
369 is less;

370 2. All material removed pursuant to this paragraph shall be  
371 deposited in an upland site in a manner that will prevent the  
372 reintroduction of the material into waters in the state except  
373 when spoil material is permitted to be used to create wildlife  
374 islands in freshwater bodies of the state when a governmental  
375 entity is permitted pursuant to s. 369.20 to create such islands  
376 as a part of a restoration or enhancement project;

377 3. All activities are performed in a manner consistent with



8-01279-18

20181308\_\_

378 state water quality standards; and

379 4. No activities under this exemption are conducted in  
380 wetland areas, as defined in s. 373.019(27), which are supported  
381 by a natural soil as shown in applicable United States  
382 Department of Agriculture county soil surveys, except when a  
383 governmental entity is permitted pursuant to s. 369.20 to  
384 conduct such activities as a part of a restoration or  
385 enhancement project.

386

387 The department may not adopt implementing rules for this  
388 paragraph, notwithstanding any other provision of law.

389 (s) The construction, installation, operation, or  
390 maintenance of floating vessel platforms or floating boat lifts,  
391 provided that such structures:

392 1. Float at all times in the water for the sole purpose of  
393 supporting a vessel so that the vessel is out of the water when  
394 not in use;

395 2. Are wholly contained within a boat slip previously  
396 permitted under ss. 403.91-403.929, 1984 Supplement to the  
397 Florida Statutes 1983, as amended, or part IV of chapter 373, or  
398 do not exceed a combined total of 500 square feet, or 200 square  
399 feet in an Outstanding Florida Water, when associated with a  
400 dock that is exempt under this subsection or associated with a  
401 permitted dock with no defined boat slip or attached to a  
402 bulkhead on a parcel of land where there is no other docking  
403 structure;

404 3. Are not used for any commercial purpose or for mooring  
405 vessels that remain in the water when not in use, and do not  
406 substantially impede the flow of water, create a navigational

8-01279-18

20181308\_\_

407 hazard, or unreasonably infringe upon the riparian rights of  
408 adjacent property owners, as defined in s. 253.141;

409 4. Are constructed and used so as to minimize adverse  
410 impacts to submerged lands, wetlands, shellfish areas, aquatic  
411 plant and animal species, and other biological communities,  
412 including locating such structures in areas where seagrasses are  
413 least dense adjacent to the dock or bulkhead; and

414 5. Are not constructed in areas specifically prohibited for  
415 boat mooring under conditions of a permit issued in accordance  
416 with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes  
417 1983, as amended, or part IV of chapter 373, or other form of  
418 authorization issued by a local government.

419  
420 Structures that qualify for this exemption are relieved from any  
421 requirement to obtain permission to use or occupy lands owned by  
422 the Board of Trustees of the Internal Improvement Trust Fund  
423 and, with the exception of those structures attached to a  
424 bulkhead on a parcel of land where there is no docking  
425 structure, may ~~shall~~ not be subject to any more stringent  
426 permitting requirements, registration requirements, or other  
427 regulation by any local government. Local governments may  
428 require either permitting or one-time registration of floating  
429 vessel platforms to be attached to a bulkhead on a parcel of  
430 land where there is no other docking structure as necessary to  
431 ensure compliance with local ordinances, codes, or regulations.  
432 Local governments may require either permitting or one-time  
433 registration of all other floating vessel platforms as necessary  
434 to ensure compliance with the exemption criteria in this  
435 section; to ensure compliance with local ordinances, codes, or

8-01279-18

20181308\_\_

436 regulations relating to building or zoning, which are no more  
437 stringent than the exemption criteria in this section or address  
438 subjects other than subjects addressed by the exemption criteria  
439 in this section; and to ensure proper installation, maintenance,  
440 and precautionary or evacuation action following a tropical  
441 storm or hurricane watch of a floating vessel platform or  
442 floating boat lift that is proposed to be attached to a bulkhead  
443 or parcel of land where there is no other docking structure. The  
444 exemption provided in this paragraph shall be in addition to the  
445 exemption provided in paragraph (b). The department shall adopt  
446 a general permit by rule for the construction, installation,  
447 operation, or maintenance of those floating vessel platforms or  
448 floating boat lifts that do not qualify for the exemption  
449 provided in this paragraph but do not cause significant adverse  
450 impacts to occur individually or cumulatively. The issuance of  
451 such general permit shall also constitute permission to use or  
452 occupy lands owned by the Board of Trustees of the Internal  
453 Improvement Trust Fund. No local government shall impose a more  
454 stringent regulation, permitting requirement, registration  
455 requirement, or other regulation covered by such general permit.  
456 Local governments may require either permitting or one-time  
457 registration of floating vessel platforms as necessary to ensure  
458 compliance with the general permit in this section; to ensure  
459 compliance with local ordinances, codes, or regulations relating  
460 to building or zoning that are no more stringent than the  
461 general permit in this section; and to ensure proper  
462 installation and maintenance of a floating vessel platform or  
463 floating boat lift that is proposed to be attached to a bulkhead  
464 or parcel of land where there is no other docking structure.

8-01279-18

20181308\_\_

465 (t) The repair, stabilization, or paving of existing county  
466 maintained roads and the repair or replacement of bridges that  
467 are part of the roadway, within the Northwest Florida Water  
468 Management District and the Suwannee River Water Management  
469 District, provided:

470 1. The road and associated bridge were in existence and in  
471 use as a public road or bridge, and were maintained by the  
472 county as a public road or bridge on or before January 1, 2002;

473 2. The construction activity does not realign the road or  
474 expand the number of existing traffic lanes of the existing  
475 road; however, the work may include the provision of safety  
476 shoulders, clearance of vegetation, and other work reasonably  
477 necessary to repair, stabilize, pave, or repave the road,  
478 provided that the work is constructed by generally accepted  
479 engineering standards;

480 3. The construction activity does not expand the existing  
481 width of an existing vehicular bridge in excess of that  
482 reasonably necessary to properly connect the bridge with the  
483 road being repaired, stabilized, paved, or repaved to safely  
484 accommodate the traffic expected on the road, which may include  
485 expanding the width of the bridge to match the existing  
486 connected road. However, no debris from the original bridge  
487 shall be allowed to remain in waters of the state, including  
488 wetlands;

489 4. Best management practices for erosion control shall be  
490 employed as necessary to prevent water quality violations;

491 5. Roadside swales or other effective means of stormwater  
492 treatment must be incorporated as part of the project;

493 6. No more dredging or filling of wetlands or water of the

8-01279-18

20181308\_\_

494 state is performed than that which is reasonably necessary to  
495 repair, stabilize, pave, or repave the road or to repair or  
496 replace the bridge, in accordance with generally accepted  
497 engineering standards; and

498 7. Notice of intent to use the exemption is provided to the  
499 department, if the work is to be performed within the Northwest  
500 Florida Water Management District, or to the Suwannee River  
501 Water Management District, if the work is to be performed within  
502 the Suwannee River Water Management District, 30 days before  
503 ~~prior to~~ performing any work under the exemption.

504  
505 Within 30 days after this act becomes a law, the department  
506 shall initiate rulemaking to adopt a no fee general permit for  
507 the repair, stabilization, or paving of existing roads that are  
508 maintained by the county and the repair or replacement of  
509 bridges that are part of the roadway where such activities do  
510 not cause significant adverse impacts to occur individually or  
511 cumulatively. The general permit shall apply statewide and, with  
512 no additional rulemaking required, apply to qualified projects  
513 reviewed by the Suwannee River Water Management District, the  
514 St. Johns River Water Management District, the Southwest Florida  
515 Water Management District, and the South Florida Water  
516 Management District under the division of responsibilities  
517 contained in the operating agreements applicable to part IV of  
518 chapter 373. Upon adoption, this general permit shall, pursuant  
519 to ~~the provisions of~~ subsection (2), supersede and replace the  
520 exemption in this paragraph.

521 (u) Notwithstanding any provision to the contrary in this  
522 subsection, a permit or other authorization under chapter 253,

8-01279-18

20181308\_\_

523 chapter 369, chapter 373, or this chapter is not required for an  
524 individual residential property owner for the removal of organic  
525 detrital material from freshwater rivers or lakes that have a  
526 natural sand or rocky substrate and that are not Aquatic  
527 Preserves or for the associated removal and replanting of  
528 aquatic vegetation for the purpose of environmental enhancement,  
529 providing that:

530 1. No activities under this exemption are conducted in  
531 wetland areas, as defined in s. 373.019(27), which are supported  
532 by a natural soil as shown in applicable United States  
533 Department of Agriculture county soil surveys.

534 2. No filling or peat mining is allowed.

535 3. No removal of native wetland trees, including, but not  
536 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

537 4. When removing organic detrital material, no portion of  
538 the underlying natural mineral substrate or rocky substrate is  
539 removed.

540 5. Organic detrital material and plant material removed is  
541 deposited in an upland site in a manner that will not cause  
542 water quality violations.

543 6. All activities are conducted in such a manner, and with  
544 appropriate turbidity controls, so as to prevent any water  
545 quality violations outside the immediate work area.

546 7. Replanting with a variety of aquatic plants native to  
547 the state shall occur in a minimum of 25 percent of the  
548 preexisting vegetated areas where organic detrital material is  
549 removed, except for areas where the material is removed to bare  
550 rocky substrate; however, an area may be maintained clear of  
551 vegetation as an access corridor. The access corridor width may

8-01279-18

20181308\_\_

552 not exceed 50 percent of the property owner's frontage or 50  
553 feet, whichever is less, and may be a sufficient length  
554 waterward to create a corridor to allow access for a boat or  
555 swimmer to reach open water. Replanting must be at a minimum  
556 density of 2 feet on center and be completed within 90 days  
557 after removal of existing aquatic vegetation, except that under  
558 dewatered conditions replanting must be completed within 90 days  
559 after reflooding. The area to be replanted must extend waterward  
560 from the ordinary high water line to a point where normal water  
561 depth would be 3 feet or the preexisting vegetation line,  
562 whichever is less. Individuals are required to make a reasonable  
563 effort to maintain planting density for a period of 6 months  
564 after replanting is complete, and the plants, including  
565 naturally recruited native aquatic plants, must be allowed to  
566 expand and fill in the revegetation area. Native aquatic plants  
567 to be used for revegetation must be salvaged from the  
568 enhancement project site or obtained from an aquatic plant  
569 nursery regulated by the Department of Agriculture and Consumer  
570 Services. Plants that are not native to the state may not be  
571 used for replanting.

572 8. No activity occurs any farther than 100 feet waterward  
573 of the ordinary high water line, and all activities must be  
574 designed and conducted in a manner that will not unreasonably  
575 restrict or infringe upon the riparian rights of adjacent upland  
576 riparian owners.

577 9. The person seeking this exemption notifies the  
578 applicable department district office in writing at least 30  
579 days before commencing work and allows the department to conduct  
580 a preconstruction site inspection. Notice must include an

8-01279-18

20181308\_\_

581 organic-detrital-material removal and disposal plan and, if  
582 applicable, a vegetation-removal and revegetation plan.

583 10. The department is provided written certification of  
584 compliance with the terms and conditions of this paragraph  
585 within 30 days after completion of any activity occurring under  
586 this exemption.

587 (v) Notwithstanding any other provision in this chapter,  
588 chapter 373, or chapter 161, a permit or other authorization is  
589 not required for the following exploratory activities associated  
590 with beach restoration and nourishment projects and inlet  
591 management activities:

592 1. The collection of geotechnical, geophysical, and  
593 cultural resource data, including surveys, mapping, acoustic  
594 soundings, benthic and other biologic sampling, and coring.

595 2. Oceanographic instrument deployment, including temporary  
596 installation on the seabed of coastal and oceanographic data  
597 collection equipment.

598 3. Incidental excavation associated with any of the  
599 activities listed under subparagraph 1. or subparagraph 2.

600 Section 5. The Division of Law Revision and Information is  
601 directed to replace the phrase "the effective date of this act"  
602 wherever it occurs in this act with the date the act becomes a  
603 law.

604 Section 6. This act shall take effect upon becoming a law.



**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: CS/SB 1612

INTRODUCER: Environmental Preservation and Conservation Committee and Senators Rader and Book

SUBJECT: Airboat Regulation

DATE: January 23, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Fav/CS</b>
2.			AEN	
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1612 creates “Ellie’s Law,” which prohibits, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- A photographic identification card.
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain’s license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain’s license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

The bill provides that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a \$500 fine.

## II. Present Situation:

### Airboats

Airboats are designed to operate in shallow water and marshlands.<sup>1</sup> An airboat is propelled by air pushed through the vessel's aircraft-like propeller which creates a column of forced air that passes by the rudders.<sup>2</sup> They are best steered and controlled through acceleration, but because of their high center of gravity and lack of flotation they are susceptible to capsizing or sinking.<sup>3</sup> Unlike most boats, airboats are incapable of going in reverse. Their forward momentum is slowed only by deceleration and the friction and displacement of the water.<sup>4</sup> As a vessel,<sup>5</sup> airboats are regulated generally under state and federal vessel operation and safety requirements.

### Florida Vessel Safety Law

Florida leads the nation in the number of vessels registered in any state with close to one million vessels.<sup>6</sup> The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.<sup>7</sup> Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.<sup>8</sup>

Chapter 327, F.S., titled the "Florida Vessel Safety Law" includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, are authorized to be enforced by the following entities or officers:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.<sup>9</sup>

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to \$1,000 or a term of imprisonment not exceeding one year. All

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<sup>1</sup> Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 [https://www.boat-ed.com/assets/pdf/handbook/fl\\_handbook\\_entire.pdf](https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf) (last visited Jan. 16, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 327.02, F.S., defines the term "vessel" as being "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

<sup>6</sup> FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

<sup>7</sup> FWC, *Boating in Florida*, <http://myfwc.com/boating/> (last visited Jan. 8, 2018).

<sup>8</sup> FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

<sup>9</sup> Section 327.70, F.S.; Section 943.10, F.S., defines the term "law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state..."

operators are responsible for operating his or her vessel in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of \$50.

### ***Safety Equipment***

All vessels are required to have size-specific safety equipment on board. The following safety items are required by state and federal law to be aboard a vessel and if found to be missing during a safety inspection can result in a vessel citation:

- Visible distress signals;
- Fire extinguishers;
- Navigation lights;
- Personal floatation devices; and
- Sound-producing devices.<sup>10</sup>

Additionally, airboats must be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel.<sup>11</sup> Such flag must be orange in color and be displayed so that the visibility of the flag is not obscured in any direction.<sup>12</sup> An airboat is also required to have a device manufactured to effectively muffle the sound of engine exhaust.<sup>13</sup> These airboat specific requirements do not apply to a person participating in an event for which a permit is required, or which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.<sup>14</sup>

### ***Boating Safety Identification Cards***

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to have aboard the vessel photographic identification and an FWC-issued boater safety identification card.<sup>15</sup> The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.<sup>16</sup>

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.<sup>17</sup> An agent is required to charge a \$2 examination

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<sup>10</sup> See s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements*, available at <http://myfwc.com/boating/regulations/#nogo> (last visited Jan. 8, 2018) and U.S. Coast Guard Auxiliary, *Vessel Safety Checks*, available at <http://cgaux.org/vsc/> (last visited Jan. 8, 2018).

<sup>11</sup> Section 327.391(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> 327.391, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 327.395(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 327.395(4), F.S.

fee, which must be forwarded to the FWC with proof of passage of the examination and may charge and keep a \$1 service fee.<sup>18</sup> The boating courses include coverage related to:

- Vessel safety regulations, including personal flotation device requirements;
- State divers-down flag requirements;
- Boating restricted areas;
- Boating accidents; and
- Manatee and ecosystem awareness.

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.<sup>19</sup> A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.<sup>20</sup>

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel;
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a commission-approved boater education course or passed a course equivalency examination approved by the commission and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by rule of the commission.<sup>21</sup>

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of \$50.<sup>22</sup>

### **Passengers For Hire on Vessels**

On federal waters a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.<sup>23</sup> This includes charters for fishing, sightseeing, diving,

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<sup>18</sup> *Id.*

<sup>19</sup> Section 327.395(5), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 327.395(6), F.S.

<sup>22</sup> Section 327.73(1)(s), F.S.

<sup>23</sup> U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, <http://wow.uscgaux.info/content.php?unit=054-09&category=captains-license-info> (last visited Jan. 17, 2018).

transportation, teaching or any use which is considered a passenger for hire situation.<sup>24</sup> When carrying 6 passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than 6 passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.<sup>25</sup> All USCG issued licenses must be renewed every 5 years, which requires a renewal physical examination and an approved drug test.<sup>26</sup>

To obtain either an OUPV license or a Master license an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within 6 months of submitting the application; and have received CPR and First Aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last 3 years on vessels of appropriate tonnage and have 360 days of deck service in the operation of vessels.<sup>27</sup>

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.<sup>28</sup> In order to purchase a charter captain or boat license an individual must have a USCG captain's license.<sup>29</sup>

### **Boating Accidents and Citations**

In 2016, there were 714 reportable<sup>30</sup> boating accidents and 67 boating related fatalities in Florida.<sup>31</sup> Seventy percent of the operators involved in fatal accidents had no formal boater education.<sup>32</sup> The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.<sup>33</sup> From 2015-2017, a total of 112 airboat accidents occurred in Florida, resulting in 146 injuries.<sup>34</sup> Commercial airboats represented 21 percent of the total accidents and almost 46 percent of the total injuries, including one fatality.<sup>35</sup>

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> FWC, *Charter and Headboat Operators' and Guides'*, <http://myfwc.com/license/saltwater/commercial-fishing/charter/> (last visited Jan. 17, 2018).

<sup>29</sup> *Id.*

<sup>30</sup> Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least \$2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.

<sup>31</sup> FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 11.

<sup>34</sup> FWC, *Senate Bill 1612 Agency Analysis*, 2 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>35</sup> *Id.*

**2016 Uniform Boating Citation Summary<sup>36</sup>**

Citation Type	Number of Citations Issued	
	FWC	Other
<b>Registration and Numbering</b> Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
<b>Safety Equipment and Regulations</b> Equipment and lighting requirements	3,260	432
<b>Boating Safety Education</b> Boating safety education I.D. cards	455	285
<b>Negligent Operation of a Vessel</b> Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

**III. Effect of Proposed Changes:**

CS/SB 1612 creates “Ellie’s Law” in honor of Elizabeth “Ellie” Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.<sup>37</sup>

The bill prohibits, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- A photographic identification card.
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain’s license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain’s license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

<sup>36</sup> FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

<sup>37</sup> Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, available at <http://www.miamiherald.com/news/local/education/article150577537.html> (last visited Jan. 17, 2018).

Additionally, the airboat operator requirements do not apply to a person participating in an event for which a permit is required, or which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions, due to an existing section wide exemption in present s. 327.391(4), F.S.

The bill amends s. 327.73, F.S., to provide that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a \$500 fine.

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have a negative, indeterminate impact on airboat operators who do not already have a United States Coast Guard Captains' License and who will, therefore, have to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

C. Government Sector Impact:

The bill requires the FWC to adopt rules establishing minimum standards for an approved airboat operator course, which, as indicated by the FWC, will not have a fiscal impact.<sup>38</sup>

#### **VI. Technical Deficiencies:**

None.

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<sup>38</sup> FWC, *Senate Bill 1612 Agency Analysis*, 5 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.391 and 327.73.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**CS by Environmental Preservation and Conservation on January 22, 2018:**

The CS changes the penalty for violations relating to the airboat operation requirements from a criminal to a noncriminal infraction. The maximum value for a fine remains that same at \$500.

**B. Amendments:**

None.





810164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
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The Committee on Environmental Preservation and Conservation  
(Rader) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 32 - 33  
and insert:  
noncriminal infraction, punishable as provided in s. 327.73.

Section 3. Paragraph (cc) is added to subsection (1) of  
section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel  
laws of this state are noncriminal infractions:



810164

11           (cc) Section 327.391(5), relating to airboat operation  
12 requirements, for which the civil penalty is up to a maximum of  
13 \$500.

14  
15 Any person cited for a violation of any provision of this  
16 subsection shall be deemed to be charged with a noncriminal  
17 infraction, shall be cited for such an infraction, and shall be  
18 cited to appear before the county court. The civil penalty for  
19 any such infraction is \$50, except as otherwise provided in this  
20 section. Any person who fails to appear or otherwise properly  
21 respond to a uniform boating citation shall, in addition to the  
22 charge relating to the violation of the boating laws of this  
23 state, be charged with the offense of failing to respond to such  
24 citation and, upon conviction, be guilty of a misdemeanor of the  
25 second degree, punishable as provided in s. 775.082 or s.  
26 775.083. A written warning to this effect shall be provided at  
27 the time such uniform boating citation is issued.

28 ===== T I T L E   A M E N D M E N T =====

29 And the title is amended as follows:

30           Delete line 7

31 and insert:

32           providing a penalty; amending s. 327.73, F.S.;

33           providing a penalty for violation of airboat operation

34           requirements; providing an effective date.

By Senator Rader

29-00389A-18

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1                   A bill to be entitled  
2           An act relating to airboat regulation; providing a  
3           short title; amending s. 327.391, F.S.; requiring, by  
4           a specified date, a commercial airboat operator to  
5           have specified documents on board the airboat while  
6           carrying passengers for hire; providing an exception;  
7           providing a penalty; providing an effective date.  
8

9 Be It Enacted by the Legislature of the State of Florida:  
10

11           Section 1. This act may be cited as "Ellie's Law."

12           Section 2. Subsection (5) is added to section 327.391,  
13 Florida Statutes, to read:

14           327.391 Airboats regulated.—

15           (5) (a) Beginning December 31, 2018, a person may not  
16 operate an airboat to carry passengers for hire on waters of the  
17 state unless he or she has all of the following on board the  
18 airboat:

19           1. A photographic identification card.

20           2. Proof of compliance with s. 327.395.

21           3. Proof of successful completion of a commission-approved  
22 airboat operator course that meets the minimum standards  
23 established by commission rule.

24           4. A certificate of successful course completion in  
25 cardiopulmonary resuscitation and first aid.

26           (b) A person issued a captain's license by the United  
27 States Coast Guard is not required to complete the boating  
28 safety education course required under s. 327.395. Proof of the  
29 captain's license must be on board the airboat when carrying

29-00389A-18

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30 passengers for hire on waters of the state.

31 (c) A person who violates this subsection commits a  
32 misdemeanor of the second degree, punishable as provided in s.  
33 775.082 or s. 775.083.

34 Section 3. This act shall take effect upon becoming a law.

**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: SB 1402

INTRODUCER: Senators Simmons and Galvano

SUBJECT: State Assumption of Federal Section 404 Dredge and Fill Permitting Authority

DATE: January 19, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<b>Favorable</b>
2.	_____	_____	<u>AEN</u>	_____
3.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 1402 provides the Department of Environmental Protection (DEP) with the power and authority to assume the dredge and fill permitting program established in section 404 of the federal Clean Water Act with the intent that DEP assume and implement the program in conjunction with the state's environmental resource permitting program established in ch. 373, F.S. Specifically, the bill:

- Authorizes DEP to adopt by rule any federal requirements, criteria, or regulations necessary to obtain assumption of the program and provides that any such rules adopted may not become effective or otherwise enforceable until the U.S. Environmental Protection Agency has approved the state's assumption application;
- Provides that state laws which conflict with the federal requirements necessary to obtain assumption of the section 404 permitting program do not apply to state administered section 404 permits;
- Provides that a state administered section 404 permit is not required for activities exempted from regulation in certain federal law and rule provisions and that certain state statutory exemptions from permitting requirements do not apply to state administered section 404 permits;
- Provides that DEP must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under federal rules and that DEP is specifically exempted from the time limitations provided in state statute for its decisions on applications for state administered section 404 permits;
- Requires that all state administered section 404 permits be issued for a period of no more than 5 years and makes other provisions for the reissuance of permits, including the adoption by rule of an expedited permitting process, and the timeframes within which DEP must make permitting decisions; and
- Authorizes DEP to delegate administration of the section 404 permitting program if such delegation is in accordance with federal law.

## II. Present Situation:

### Dredge and Fill Activities

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.<sup>1</sup> Filling means deposition of any material in wetlands or other surface waters.<sup>2</sup> Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts (WMDs), the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

The state of Florida regulates dredge and fill activities in all waters of the state<sup>3</sup> through DEP's environmental resource permit (ERP) program.<sup>4</sup> The ERP program operates in addition to the federal regulatory program for dredge and fill activities. The Corps has been responsible for regulating activities in navigable waters<sup>5</sup> through the granting of permits since the passage of the Rivers and Harbors Act of 1899.<sup>6</sup> Section 404 of the Clean Water Act broadened the Corps authority over "dredging and filling" in the waters of the United States.<sup>7</sup> The Corps administers these dredge and fill programs and the U.S. Environmental Protection Agency (EPA) provides oversight of the Corps dredge and fill program in waters of the United States.<sup>8</sup> Federal section 404 permits and state ERP permits overlap in that both must be obtained for impacts above regulatory thresholds in federal waters. Activities confined to state waters, beyond the limits of federal jurisdiction, require only a state ERP permit.

### Federal Dredge and Fill Permits

The federal government regulates dredge and fill activities in navigable waters through section 10 of the Rivers and Harbors Act of 1899.<sup>9</sup> The federal government regulates a broader category of waters, "waters of the United States," pursuant to section 404 of the Clean Water Act. Section

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<sup>1</sup> Section 373.403(13), F.S.

<sup>2</sup> Section 373.403(14), F.S.

<sup>3</sup> Section 373.019(22), F.S., defines the term "waters of the state" as any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

<sup>4</sup> See Part IV, Ch. 373, F.S., especially s. 373.4131, F.S.

<sup>5</sup> Navigable waters (section 10 waters) are a subset of section 404 waters and extend to the high tide line and include any adjacent non-tidal 404 waters to the ordinary high water mark or the limit of the adjacent wetlands.

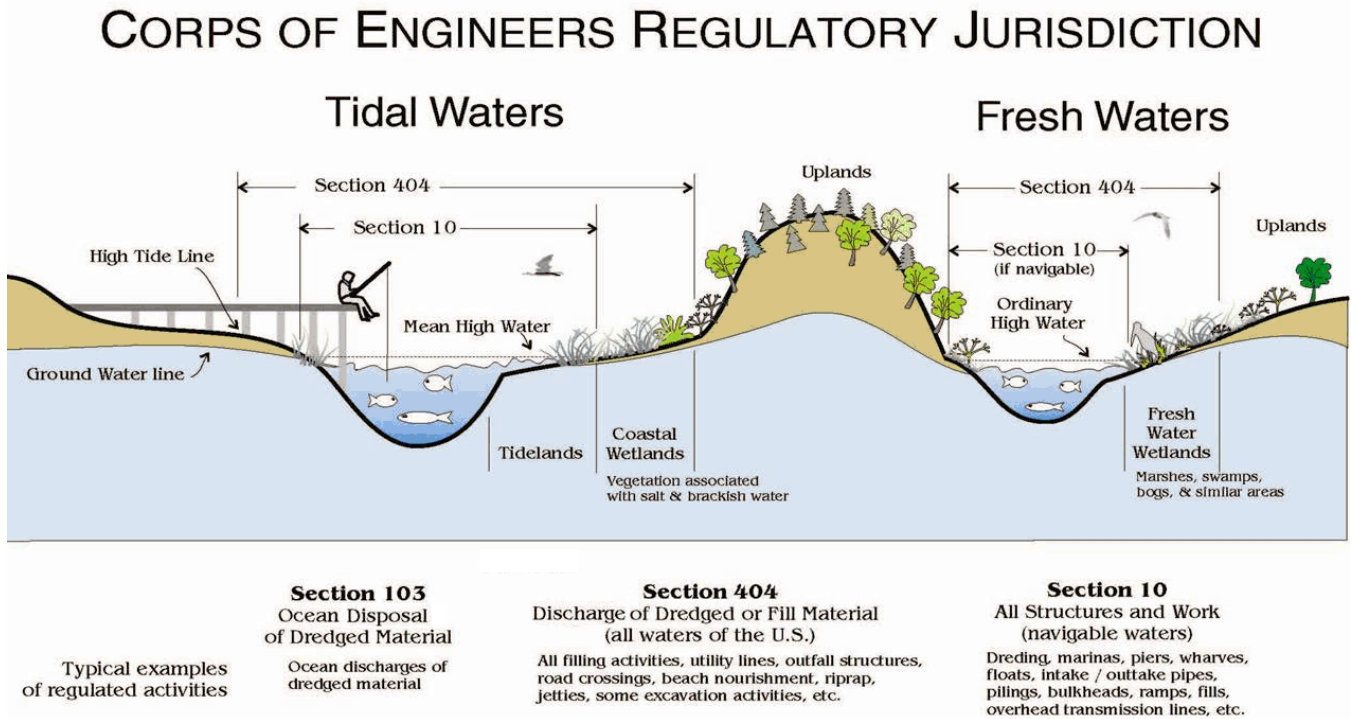
<sup>6</sup> Department of Environmental Protection (DEP), *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, 2 (Sept. 30, 2005) available at [https://www.aswm.org/pdf\\_lib/consolidation\\_program.pdf](https://www.aswm.org/pdf_lib/consolidation_program.pdf).

<sup>7</sup> Waters of the United States are surface waters such as navigable waters and their tributaries, all interstate waters and their tributaries, natural lakes, all wetlands adjacent to other waters, and all impoundments of these waters. However, the precise definition of "waters of the United States" is subject to multiple interpretations. A 2015 revised regulatory definition has been stayed by the U.S. Court of Appeals for the Sixth Circuit. In response, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have reverted to the definition promulgated in 1986 and 1988 as interpreted by subsequent Supreme Court decisions and guidance documents. See *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159 (2001) and *Rapanos v. United States*, 547 U.S. 715 (2006).

<sup>8</sup> 33 U.S.C. s. 1344 (2012).

<sup>9</sup> 33 U.S.C. s. 403 (2012).

404 establishes a program for permits for the discharge of dredged or fill material into navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects.<sup>10</sup> The illustration below is descriptive of the Corps jurisdiction over dredge and fill activities.<sup>11</sup>



### Requirements for a Section 404 permit

The Corps administers section 404 permits under the EPA established guidelines, subject to an EPA veto on a case-by-case basis.<sup>12</sup> The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or
- The nation’s waters would be significantly degraded.<sup>13</sup>

An individual permit is required for potentially significant impacts. The Corps evaluates applications under a public interest review, as well as the environmental criteria set forth by EPA.<sup>14</sup> The guidelines provide a sequential review process which first requires a permit applicant

<sup>10</sup> DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, 2 (Sept. 30, 2005) available at [https://www.aswm.org/pdf\\_lib/consolidation\\_program.pdf](https://www.aswm.org/pdf_lib/consolidation_program.pdf).

<sup>11</sup> U.S. Army Corps of Engineers (Corps), *Regulatory Jurisdiction Overview*, <http://www.spn.usace.army.mil/Missions/Regulatory/Jurisdiction-Determinations/> (last visited Jan. 10, 2018).

<sup>12</sup> O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1255 (1995) available at <http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/6/> (last visited Jan. 9, 2018).

<sup>13</sup> EPA, *Section 404 Permitting Program*, <http://www.epa.gov/cwa-404/section-404-permit-program> (last visited Jan. 9, 2018).

<sup>14</sup> *Id.*

to demonstrate that all available alternatives to the discharge of dredged or fill material have been considered and that no practicable alternative exists which would have a less adverse impact on the aquatic ecosystem, and which also would not have other significant adverse environmental consequences.<sup>15</sup> Practicable alternatives, include, but are not limited to:

- Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges of dredged or fill material at other locations in waters of the United States or ocean waters.<sup>16</sup>

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Practicable alternatives could include moving the proposed activity to an area not presently owned by the applicant.<sup>17</sup> If the activity associated with a discharge is not water dependent, practicable alternatives that do not involve wetlands or other special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, practicable alternatives to a proposed discharge into a wetland which do not themselves involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless otherwise clearly demonstrated.<sup>18</sup> A discharge cannot be permitted if it would violate other applicable laws, including state water quality standards, toxic effluent standards, the Endangered Species Act, and marine sanctuary protections.<sup>19</sup> Further, the discharge cannot cause or contribute to significant degradation of wetlands by adversely impacting human health or welfare, wildlife, ecosystem integrity, recreation, aesthetics, and economic values.<sup>20</sup> If all of these guidelines are met, then the applicant must show that all appropriate and practicable steps will be taken to minimize adverse impacts of the discharge on wetlands.<sup>21</sup>

After avoidance and minimization criteria are satisfied the Corps considers mitigation. The purpose of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States. In establishing mitigation requirements, the Corps strives to achieve a goal of no overall net loss of natural wetland values and functions. The developer can be required to enhance, restore, or create wetlands on or near the development site.<sup>22</sup>

### ***Section 404 Exemptions***

Discharges of dredged or fill material are not prohibited or otherwise subject to regulation if they are associated with normal ongoing farming, ranching, and forestry activities, such as plowing, seeding, cultivating, or harvesting food, fiber, or forest products; minor drainage; maintenance of drainage ditches; construction and maintenance of irrigation ditches; construction and maintenance of farm or stock ponds; construction and maintenance of farm or forest roads, in accordance with best management practices; construction of temporary sedimentation basins on a construction site; and maintenance of dams, dikes, and levees. These discharges are exempt

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<sup>15</sup> 40 C.F.R. § 230.10(a)(1).

<sup>16</sup> *Id.*

<sup>17</sup> 40 C.F.R. § 230.10(a)(2).

<sup>18</sup> 40 C.F.R. § 230.10(a)(4).

<sup>19</sup> 40 C.F.R. § 230.10(b).

<sup>20</sup> 40 C.F.R. § 230.10(c).

<sup>21</sup> 40 C.F.R. § 230.10(d).

<sup>22</sup> 40 C.F.R. § 230.93.



from the 404 permitting requirements if they do not convert a wetland to an upland area through the discharge of dredged or fill material. In addition, discharges resulting from an activity with respect to which a state has an approved program under section 1288(b)(4) are exempt. Such programs are intended to remediate areas having substantial water quality control problems and address control of dredge and fill discharge of agriculture and silviculture nonpoint sources of pollution, mine-related sources of pollution, construction activity related sources of pollution, salt water intrusion, residual waste, or disposal of pollutants on land or in subsurface excavations.<sup>23</sup>

### **State Dredge and Fill Permits**

Florida regulates dredge and fill activities through its environmental resource permit (ERP) program, which is administered primarily under part IV of ch. 373, F.S. It is a statewide program implemented jointly by DEP and the WMDs under operating agreements that provide a division of responsibilities between the agencies. Provisions exist for local programs to be delegated authority to implement the program on behalf of DEP and the WMDs. Currently Broward County is the only local program to have received delegation.<sup>24</sup>

ERPs are required for alterations to the landscape that exceed permitting thresholds or that are not otherwise exempt by statute or rule from regulation.<sup>25</sup> Such alterations are generally referred to as surface water management systems and include the management of the flow of water across the land surface and activities involving the construction, alteration, operation, maintenance or repair, removal, and abandonment of dams, impoundments, reservoirs, and appurtenant works. It also includes alterations of uplands and dredging and filling in wetlands and other surface waters, including isolated wetlands. Activities regulated by the ERP program include: clearing; grading; paving; erection, alteration, or removal of structures; and the construction of new or altered stormwater management systems. Certain permitting thresholds exist, specific to each WMD, and exemptions from permitting also exist by statute and rule.<sup>26</sup>

### ***ERP Exemptions***

Under ss. 373.406 and 403.927, F.S., most routine, customary agricultural, silvicultural, floricultural, and horticultural activities do not require an ERP permit. Any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture has the right to alter the topography of the land for purposes consistent with the practice of such occupation, provided the alteration is not for the sole or predominant purpose of impounding or obstructing surface waters. All five state WMDs have adopted specific rules to regulate other agricultural activities, including the adoption of noticed general permits.<sup>27</sup> The review of all agricultural activities,

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<sup>23</sup> 33 U.S.C. s. 1344(f); 33 C.F.R. § 323.4; 40 C.F.R. § 232.3.

<sup>24</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 2 (Feb. 23, 2011).

<sup>25</sup> Section 373.413(1), F.S.; DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 1.0, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (Oct. 1, 2013) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-03174> (last visited Jan. 15, 2018).

<sup>26</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 4 (Feb. 23, 2011).

<sup>27</sup> Fla. Admin. Code Ch. 62-113, accessible at: <https://floridadep.gov/ogc/ogc/content/operating-agreements>, (last visited Jan. 15, 2018).

including permitting, compliance, and enforcement, is the responsibility of the WMDs.<sup>28</sup> Florida's Department of Agriculture and Consumer Services (DACCS), in cooperation with DEP and the WMDs also have developed various best management practices handbooks to assist the agriculture community in working in a manner that will minimize adverse impacts to wetlands and other surface waters.<sup>29</sup>

Other exempt activities include activities permitted by other agencies, maintenance activities on already impacted areas, maintenance of deepwater ports, and other minor structures.

DEP and WMDs may establish by rule activities that they determine will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district.<sup>30</sup> DEP has identified 60 activities that are exempt from ERP requirements.<sup>31</sup> Further, DEP and the WMDs may determine, on a case-by-case basis, whether a specific activity only minimally or insignificantly has an individual or cumulative adverse impact on the water resources. These are known as *de minimis* exemptions.<sup>32</sup>

Certain other activities have been exempted by statute or rule from the need for regulatory permits. Most of these exemptions are established in s. 403.813, F.S. Examples of exempt activities include:

- Construction of small, private docks, maintenance dredging, repair and replacement of seawalls, and installation of new seawalls and rip rap in artificial waters;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits; and
- Certified aquaculture activities that apply appropriate best management practices adopted under s. 597.004, F.S.<sup>33</sup>

### ***ERP Permit Standards***

The ERP application is issued, withdrawn, or denied in accordance with state statutory and rule criteria.<sup>34</sup> All activities requiring a permit must not:

- Cause adverse water quantity impacts to receiving waters and adjacent lands;
- Cause adverse flooding to on-site or off-site property;
- Cause adverse impacts to existing surface water storage and conveyance capabilities;
- Adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;

<sup>28</sup> DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 1.0, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (Oct. 1, 2013) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-03174> (last visited January 15, 2018).

<sup>29</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 4, 12 (Feb. 23, 2011); s. 570.93, F.S.

<sup>30</sup> Section 373.406, F.S.

<sup>31</sup> Rule 62-330.051, F.A.C.

<sup>32</sup> DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 3.2.7, incorporated by reference in r. 62-330.010(4), F.A.C. (October 1, 2013) available at: <https://www.flrules.org/gateway/reference.asp?No=Ref-03174> (last visited January 16 2018).

<sup>33</sup> Section 403.813, F.S.

<sup>34</sup> *Id.* at 2, 3; s. 373.406, F.S.; s. 373.4131, F.S.; Fla. Admin. Code Ch. 62-330.

- Adversely affect the quality of receiving waters such that state water quality standards will be violated, which includes surface waters and groundwater. Special provisions apply to allow no degradation of the water quality of Outstanding Florida Waters (OFWs),<sup>35</sup>
- Cause adverse secondary impacts to water resources;
- Adversely impact the maintenance of surface or groundwater levels or surface water flows; or
- Adversely impact a work of a WMD.<sup>36</sup>

In addition, activities requiring a permit must:

- Be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;
- Be conducted by an entity with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
- Comply with applicable special basin or geographic area criteria adopted by rule.<sup>37</sup>

Activities in wetlands and other surface waters must not be contrary to the public interest, or, if the activity is located in an OFW, the activity must be clearly in the public interest.<sup>38</sup> Direct, secondary, and cumulative impacts are considered for all activities requiring a permit. Secondary impacts are those actions or actions that are very closely related and directly linked to the activity under review that may affect wetlands and other surface waters and that would not occur but for the proposed activity. Cumulative impacts are residual adverse impacts to wetlands and other surface waters in the same drainage basin that have or are likely to result from similar activities (to that under review) that have been built in the past, that are under current review, or that can reasonably be expected to be located in the same drainage basin as the activity under review. Mitigation that fully offsets impacts within the drainage basin where the project impacts occur is assumed to not have any adverse cumulative impacts. Consideration is given to upland buffers that are designed to protect the functions that uplands provide to wetlands and other surface waters. Special provisions also exist to protect waters used for shellfish harvesting.<sup>39</sup>

### ***ERP Permit Processing***

ERP applications are initially received by the DEP, WMD, or delegated local government, who then forward the joint application to the Corps. Upon receipt, the DEP, WMDs, and delegated local governments immediately send a copy of the application to the Corps if the activity involves work in wetlands or other surface waters. Also upon receipt, the DEP, WMDs, and delegated local governments have 30 days to review the application and inform the applicant of any material needed to evaluate the application in accordance with statutory and rule criteria.<sup>40</sup>

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<sup>35</sup> Listed in Fla. Admin. Code Ch. 62-302.

<sup>36</sup> Fla. Admin. Code R. 62-330.301(1).

<sup>37</sup> *Id.*

<sup>38</sup> Section 373.414, F.S.

<sup>39</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 6, 7 (Feb. 23, 2011).

<sup>40</sup> *Id.* at 10.

For the DEP, an applicant has 90 days to respond to the request, and upon receipt of new material submitted by the applicant, the agencies have another 30 days to review the material for completeness. The WMD processing procedures vary to accommodate the requirements of their different governing boards. DEP and the WMDs must issue or deny an ERP within 60 days of receiving a complete application. Application completeness is determined by whether the applicant has submitted all the materials required by review as specified by rule and statute.

Upon receipt of an application, a copy also is initially sent to the state's Fish and Wildlife Conservation Commission (FWC). Comments and suggestions regarding listed species and other wildlife impacts from the FWC are considered during processing of the application. The FWC also may object to issuance of an ERP or wetland resource permit under Florida's Approved Coastal Zone Management Act coordination process. The DEP and WMDs do not rely on, but will also consider, comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service when such comments are made in a timely manner during the processing of a state permit.

ERP permits are valid for the life of the system, including all structures and works authorized for construction or land alteration. The ERP permit does not automatically expire after the construction phase, and continues to cover the operation and use of the system.<sup>41</sup>

### **State Assumption of the Federal Section 404 Program**

A state may apply to the EPA for state assumption of the federal section 404 program. The application for state assumption must include a complete description of the state program it proposes to administer and establish under state law.<sup>42</sup> In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.<sup>43</sup> The EPA then conducts a rigorous assessment of the state's program and ensures that it is no less stringent than the federal program.<sup>44</sup> To date, only two states (Michigan and New Jersey) have assumed section 404 permitting authority.<sup>45</sup>

A state that is approved by EPA to administer the section 404 permitting program serves as the regulatory entity over dredge and fill activities within section 404 waters in place of the Corps. However, under federal law, waters that are, or could be, used to transport interstate or foreign commerce, tidal waters, and wetlands adjacent to these waters are non-assumable.<sup>46</sup> Thus, the Corps retains jurisdiction over these waters.<sup>47</sup> For coastal states, the extent of jurisdiction

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<sup>41</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 10, 11 (February 23, 2011), DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 5.5.3.5, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (October 1, 2013) available at:

<https://www.flrules.org/gateway/reference.asp?No=Ref-03174> (last visited January 15, 2018), s. 373.4141, F.S.

<sup>42</sup> 33 U.S.C. s. 1344(g).

<sup>43</sup> *Id.*

<sup>44</sup> David Evans, *Clean Water Act §404 Assumption: What is it, how does it work, and what are the benefits?*, Vol. 31, No.3 National Wetlands Newsletter, 18 (May-June 2009) available at [http://www.aswm.org/pdf\\_lib/evans\\_2009.pdf](http://www.aswm.org/pdf_lib/evans_2009.pdf) (last visited Jan. 9, 2018).

<sup>45</sup> See 40 C.F.R. §§233.70 and 233.71.

<sup>46</sup> Association of State Wetland Managers (ASWM), *Section 404 Program Assumption: A Handbook for States and Tribes*, 5 (Aug. 2011).

<sup>47</sup> *Id.*; see 33 U.S.C. s. 403 (2012).

retained by the Corps may be an impediment to state assumption. Additionally, there is uncertainty regarding what specific waters the Corps retains jurisdiction over and the extent to which their adjacent wetlands extend landward.<sup>48</sup>

To curtail some uncertainty over the scope of assumable waters and wetlands, EPA formed the Assumable Waters Subcommittee to provide advice and develop recommendations on how EPA can best clarify which waters a state may assume, and which waters the Corps retains jurisdiction over. The report recommended that the Corps retain authority over waters included on the lists of waters regulated under section 10 of the Rivers and Harbors Act, which are developed by the Corps.<sup>49</sup> The report also recommends that each state and the Corps agree to an administrative boundary that would determine the authority the Corps would retain over all wetlands adjacent to the retained navigable waters. If a default is not agreed upon, the report recommends a 300-foot national administrative default line.<sup>50</sup>

Therefore, DEP and the Corps may negotiate an administrative boundary for the adjacent wetlands of section 10 waters in order to conform the boundary to existing state regulations or natural features or, alternatively, use a national administrative default boundary of 300 feet from retained navigable waters.<sup>51</sup> Florida could potentially assume authority to administer the federal dredge and fill regulations for those waters classified as section 404 waters, excluding navigable section 10 waters.

### ***Assumption Requirements***

In order to be eligible to assume administration of the section 404 permitting program, a state must meet the following specified criteria:

- The state must have jurisdiction over all waters, including wetlands that are under federal jurisdiction. Dredge and fill activities in lakes, streams, and other waters defined in federal regulations must be regulated by the state in addition to wetlands.
- The state's laws must regulate at least the same activities as those regulated under federal law. State regulations can be broader than federal regulations but cannot exempt activities which require a federal permit.
- The state laws must ensure compliance with federal regulations, including the section 404(b)(1) guidelines. State regulations can provide greater resource protection but cannot be less stringent than federal regulations.

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<sup>48</sup> Assumable Waters Subcommittee, *Draft Final Report of the Assumable Waters Subcommittee Submitted to the National Advisory Council for Environmental Policy and Technology*, 1 (May 2017) available at [https://www.epa.gov/sites/production/files/2017-05/documents/draft\\_aw\\_subcommittee\\_final\\_report\\_5.2.17.pdf](https://www.epa.gov/sites/production/files/2017-05/documents/draft_aw_subcommittee_final_report_5.2.17.pdf) (last visited Jan. 10, 2018).

<sup>49</sup> *Id.* at 3; See

[http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other\\_permitting\\_factors/Jacksonville%20District%20Section%2010%20Waters.pdf](http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/Jacksonville%20District%20Section%2010%20Waters.pdf) for the Section 10 Rivers and Harbors Act listed waters in Florida.

<sup>50</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 4 (Aug. 2011).

<sup>51</sup> Environmental Protection Agency (EPA), *Final Report of the Assumable Waters Subcommittee*, vi (May 2017) [https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot\\_05-2017\\_tag508\\_05312017\\_508.pdf](https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot_05-2017_tag508_05312017_508.pdf) (last visited Jan. 15, 2018).

- The state program must have adequate enforcement authority. Under a state-assumed program, primary responsibility for enforcement rests with the state.<sup>52</sup>

A state must have the authority necessary to assume responsibility for the entire section 404 permitting program. It is not possible to assume only a portion of the program.<sup>53</sup>

While a state is not required to adopt the federal wetland delineation methodology, it must show that the state methodology is equally as, or more, protective. The three categories of wetland indicators considered in determining whether a certain area is considered a wetland are hydrologic indicators, hydric soils, and wetland plant species.<sup>54</sup> Currently, the federal delineation methodology and Florida's delineation methodology use the same hydrologic indicators, the same hydric soil definition and index, and align substantially the same on wetland plant species, with a few exceptions like slash pine and gallberry. For a location to be deemed a wetland under the Corp's wetland delineation manual, indicators from all three categories of indicators must be present at the same time for such location.<sup>55</sup> Under the DEP's wetland methodology, only two of the three indicators must be present for the location to be deemed a wetland.<sup>56</sup> Thus, every instance where the Corps would deem a location a wetland, the location would be delineated as a wetland under the DEP's methodology as well.

### ***State Program Operation and Federal Oversight***

A state must provide public notice of state administered section 404 permit applications and provide a reasonable period, normally 30 days, for interested parties to provide comment.<sup>57</sup> Interested parties may request a public hearing on a state administered section 404 permit application. A state must hold a public hearing when it determines there is a significant degree of public interest in a state administered section 404 permit application or a draft general permit. A state may also hold a hearing, at its discretion, whenever it determines a hearing may be useful to a decision on the state administered section 404 permit application.<sup>58</sup>

If the EPA does not comment on a state administered section 404 permit application, the state must make its final permit decision at the close of the public comment period.<sup>59</sup> If the EPA comments on the state administered section 404 permit application, the state must follow a specific procedure.<sup>60</sup> In the event that the state neither satisfies EPA's objections or requirements for a permit condition nor denies the state administered section 404 permit, the Corps must

<sup>52</sup> EPA, *Final Report of the Assumable Waters Subcommittee*, 2 (May 2017) available at [https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot\\_05-2017\\_tag508\\_05312017\\_508.pdf](https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot_05-2017_tag508_05312017_508.pdf) (last visited Jan. 15, 2018).

<sup>53</sup> ASWM, *Clean Water Act Section 404 State Assumption*, 3, available at [https://www.aswm.org/pdf\\_lib/cwa\\_section\\_404\\_state\\_assumption\\_factsheets.pdf](https://www.aswm.org/pdf_lib/cwa_section_404_state_assumption_factsheets.pdf) (last visited Jan. 13, 2018).

<sup>54</sup> EPA, *Section 404 of the Clean Water Act: How Wetlands are Defined and Identified*, <https://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified> (last visited Jan. 10, 2018).

<sup>55</sup> Corps, *Corps of Engineers Wetlands Delineation Manual*, (Jan. 1987), available at <http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/Wetlands/1987WetlandDelineation.pdf> (last visited Jan. 10, 2018).

<sup>56</sup> Fla. Admin. Code R. 62-300(2)(d).

<sup>57</sup> 40 C.F.R. § 233.32(b).

<sup>58</sup> 40 C.F.R. § 233.33.

<sup>59</sup> 40 C.F.R. § 233.35(b).

<sup>60</sup> 40 C.F.R. § 233.35(a).

process the permit application. Significantly, if EPA objects to issuance of a permit, the state may not issue a section 404 permit unless the objection is resolved. There is no federal provision for the automatic issuance of a permit based on the running of time.<sup>61</sup>

The EPA has responsibility for oversight of state-assumed section 404 permitting programs. An approved state section 404 program is operated under the provisions of EPA's 404 state program regulations, found at 40 C.F.R. Part 233. These regulations define the process for requesting approval of a state program and operation of a state program.

A Memorandum of Agreement (MOA) between EPA and the state, signed at the time of program approval, clarifies the roles and responsibilities of both parties, and the scope of federal oversight. Similarly, an MOA entered into between the state and the Secretary of the Army includes a description of the waters within the state over which the Corps retains jurisdiction, the procedures for transferring to the state pending 404 permit applications, and the identification of all general permits to be administered and a plan for transferring those permits to the state. While all permit applications received by the state are subject to review by EPA, EPA typically waives review of all but a small percentage (2-5% on an annual basis). These applications include:

- Those public notices for which review is mandated under the federal regulations, including projects with the potential to impact critical resource areas such as wetlands that support federally listed species, sites listed under the National Historical Preservation Act, components of the National Wild and Scenic River System, and similar areas; and
- State-specific categories of projects negotiated in the state program MOA. States also provide EPA with an annual report that summarizes permitting and enforcement actions taken during the year.<sup>62</sup>

Section 404 permits issued by the state must include conditions prescribed by the EPA.<sup>63</sup> This includes that state administered section 404 permits may not exceed five years.<sup>64</sup> Section 404 permits issued by the Corps and Florida's ERPs have longer or indefinite durations. Applicants may seek to extend the duration of their state administered section 404 permits, but the extension may not last beyond five years from the original effective date.<sup>65</sup> A state may continue Corps or state issued section 404 permits until the effective date of the new permits, if state law allows.<sup>66</sup>

### ***Endangered Species Act***

Once a state assumes section 404 permitting authority, the permits become state permits issued under state law. Therefore, provisions of federal law which apply to federal permit actions, including section 7 of the Endangered Species Act, no longer apply.<sup>67</sup> Section 7 of the ESA requires direct consultation with the United States Fish and Wildlife Service (USFWS) for any federal activity that may affect a federally listed species.

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<sup>61</sup> 33 U.S.C. § 1344(j); 40 C.F.R. § 233.50(j).

<sup>62</sup> ASWM, *Clean Water Act Section 404 State Assumption*, 3, 4, 10, available at [https://www.aswm.org/pdf/lib/cwa\\_section\\_404\\_state\\_assumption\\_factsheets.pdf](https://www.aswm.org/pdf/lib/cwa_section_404_state_assumption_factsheets.pdf) (last visited Jan. 13, 2018).

<sup>63</sup> 40 C.F.R. § 233.23.

<sup>64</sup> 33 U.S.C. § 1344(h)(1)(A)(ii); 40 C.F.R. § 233.23(b).

<sup>65</sup> 40 C.F.R. § 233.36(c)(2)(v).

<sup>66</sup> 40 C.F.R. § 233.38.

<sup>67</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 24 (Aug. 2011) available at [https://www.aswm.org/pdf/lib/cwa\\_section\\_404\\_program\\_assumption.pdf](https://www.aswm.org/pdf/lib/cwa_section_404_program_assumption.pdf) (last visited Jan. 10, 2018).

To ensure that federally listed species do not lose protections, state assumption requirements necessitate that the EPA review all permit applications that have a reasonable potential for affecting federally listed species.<sup>68</sup> In this review, the EPA coordinates with the USFWS, as well as the National Marine Fisheries Service (NMFS) and the Corps as applicable, and retains the authority to prohibit the state from issuing a section 404 permit if the EPA objects.<sup>69</sup>

A state is prohibited from issuing a section 404 permit if the issuance of the permit would jeopardize the continued existence of a listed federal species or result in the likelihood of the destruction or adverse modification of critical habitat, unless an exemption has been granted by the Endangered Species Commission.<sup>70</sup> The section 404(b)(1) guidelines require full consideration of impacts to threatened and endangered species and require that any such impacts be considered in making factual determinations and the findings of compliance or non-compliance.<sup>71</sup>

In some states with a considerable number of endangered species, like Florida, the need for coordination under the ESA could prove to be a significant impediment to state program assumption. The coordinated-review process with the EPA and the USFWS for applications that may affect federally listed species may be achieved through an MOA.<sup>72</sup> The DEP has stated that it intends to develop such an agreement that maintains section 7 consultation with the DEP standing in like a federal agency. The agreement would specify which permit applications need to go to USFWS for review and the timing of the process.<sup>73</sup>

### ***Funding***

The initial evaluation and development of a state-administered section 404 permitting program can be significant. The EPA has estimated that states spend an average of \$225,000 when investigating the option to assume the section 404 program.<sup>74</sup> The EPA does provide federal financial assistance through Wetland Program Development Grants to states fully considering assumption.<sup>75</sup>

While federal funds may be available for gaining state assumption, no federal funds are allocated to a state for administration of the state program. Federal law requires all pending section 404 permit applications to be transferred to the state program upon assumption.<sup>76</sup> Annual costs for the ongoing administration of a state program varies from state to state.<sup>77</sup> For states that already

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<sup>68</sup> 40 C.F.R. § 230.30.

<sup>69</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 25 (Aug. 2011).

<sup>70</sup> 40 C.F.R. §230.10(b)(3).

<sup>71</sup> 40 C.F.R. Part 230.

<sup>72</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 25 (Aug. 2011).

<sup>73</sup> Email from Kevin Cleary, Legislative Affairs Director, DEP (Dec. 15, 2017) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>74</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 14 (Aug. 2011).

<sup>75</sup> *Id.* at 26.

<sup>76</sup> 40 C.F.R. § 233.14(b)(2).

<sup>77</sup> ASWM, *Section 404 Program Assumption: A Handbook for States and Tribes*, 27 (Aug. 2011).



expend funds operating a state permit program, such as Florida's ERP program, the added cost of state assumption may not be as significant.<sup>78</sup>

### **Existing State Authority**

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource permitting program.<sup>79</sup> Florida law was later amended to authorize DEP to obtain issuance from the Corps of an expanded state programmatic general permit or a series of regional general permits for Florida and to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 acres or less of wetlands or other surface waters.<sup>80</sup>

The Clean Water Act authorizes, and the Corps has developed, numerous alternative permitting procedures to reduce regulatory burdens. A "general permit" is a Corps authorization issued on a nationwide or regional basis for a category of activities that are substantially similar in nature and cause only minimal individual and cumulative impacts.<sup>81</sup> After the Corps issues a general permit, individual activities falling within the categories authorized by the general permits do not need to seek further authorization by the Corps.<sup>82</sup> The Corps currently implements 17 general permits specifically for Florida and 44 nationally. These activities include maintenance dredging, transmission lines, residential docks, and other minor structures.<sup>83</sup>

A state desiring to administer a general permit may submit to the Corps a description of the program the state proposes to establish and administer under state law.<sup>84</sup> If the Corps approves the state's program, the state takes over issuing the general permits.<sup>85</sup> Programmatic general permits are a type of general permit founded on an existing state, local, or federal agency program designed to avoid duplication with that program. The Corps has issued 12 programmatic general permits for Florida.<sup>86</sup>

## **III. Effect of Proposed Changes:**

### **Authority for State Assumption**

The bill:

- Defines the term "state assumed waters" to mean waters of the United States that the state assumes permitting authority over pursuant to federal law for the purposes of permitting the discharge of dredge or fill material;

<sup>78</sup> *Id.*

<sup>79</sup> Ch. 2005-273, s. 3, Laws of Fla.

<sup>80</sup> Section 373.4144, F.S.

<sup>81</sup> 33 U.S.C. § 1344(e)(1).

<sup>82</sup> 33 C.F.R. § 325.2(e)(2).

<sup>83</sup> Corps, *Sourcebook*, <http://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/> (last visited Jan. 16, 2018).

<sup>84</sup> 33 U.S.C. §1344(g)(1).

<sup>85</sup> 33 U.S.C. §1344(h).

<sup>86</sup> Corps, *Sourcebook*, <http://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/> (last visited Jan. 16, 2018).

- Provides that DEP has the power and authority to assume, in accordance with federal law, the dredge and fill permitting program established in section 404 of the Clean Water Act;
- Authorizes DEP to adopt by rule any federal requirements, criteria, or regulations necessary to obtain assumption of the section 404 permitting program, including, but not limited to, the section 404(b)(1) guidelines and the public interest review criteria in 33 C.F.R. s. 320.4(a);
- Provides that any such rules adopted may not become effective or otherwise enforceable until the Environmental Protection Agency (EPA) has approved the state's assumption application; and
- Provides that the authority granted to DEP in the bill is intended to be sufficient to enable DEP to assume and implement the federal section 404 dredge and fill permitting program in conjunction with the state's ERP program.

### **Reconciliation of State Law**

The bill provides that:

- The application of state law to further regulate discharges in state assumed waters is not prohibited if such state law does not conflict with the federal requirements necessary to obtain assumption of the section 404 permitting program;
- State laws which conflict with the federal requirements do not apply to state administered section 404 permits.

### ***Applicability of Federal and State Exemptions***

A state administered section 404 permit is not required for activities exempted from federal regulation. These exemptions are described on pages 4 and 5 of this analysis. The bill clarifies that specified state statutory exemptions from permitting requirements continue to apply to ERPs, but those same exemptions do not apply to state administered section 404 permits. These exemptions are described on pages 5 and 6 of this analysis.

### **Implementation of Section 404 Program**

The bill:

- Provides that upon state assumption of the section 404 permitting program, DEP must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under federal rules;
- Specifically exempts DEP from the time limitations provided in state statute for state administered section 404 permits;
- Requires that all state administered section 404 permits must be for a period of no more than 5 years;
- Provides that a state administered section 404 permit does not expire until DEP takes final action upon the application for reissuance of the permit or until the last day for seeking judicial review of the agency order or a later date fixed by order of a reviewing court;
- Provides that if DEP fails to render a permitting decision within the time allowed by federal law and rule or a memorandum of agreement executed by DEP and EPA, whichever is shorter, the applicant may apply for an order from the circuit court requiring DEP to render a decision within a specified time;

- Requires DEP to adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state administered section 404 permits where:
  - There have been no material changes in the scope of the project as originally permitted;
  - Site and surrounding environmental conditions have not changed; and
  - The applicant does not have a history of noncompliance with the existing permit; and
- Provides that a decision by DEP to approve the reissuance of a state administered section 404 permit is subject to state statutory provisions governing challenges and hearings of agency decisions only with respect to any material permit modification or material changes in the scope of the project as originally permitted.

The bill authorizes DEP to delegate administration of the section 404 permitting program if such delegation is in accordance with federal law. If a delegation occurs, DEP must retain the authority to review, modify, revoke, or rescind a state administered section 404 permit issued by any delegated entity to ensure consistency with federal law.

The bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

DEP maintains that the provisions of this bill do not provide authority to collect a fee for 404 permit applications and that assumption of the section 404 program does not grant authority to collect fees. According to DEP, despite any other provision of law that may provide authorization, it does not intend to charge additional fees for 404 permit applications.<sup>87</sup>

##### **B. Private Sector Impact:**

Indeterminate. Assumption of the 404 dredge and fill permitting program by the state may reduce the costs incurred by permit applicants as a result of the streamlined permitting process and may increase other efficiencies that result from dredge and fill

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<sup>87</sup> Department of Environmental Protection, *Senate Bill 1402 Agency Legislative Bill Analysis* (January 17, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

permitting by a single government agency. State assumption may also reduce the length of time necessary to obtain a dredge and fill permit.<sup>88</sup>

**C. Government Sector Impact:**

This bill has an indeterminate fiscal impact on the state. The bill may have a negative fiscal impact on DEP from the costs of administering the section 404 permitting program. Reprogramming the permit tracking and compliance and enforcement applications and databases may be necessary. In addition, DEP must engage in rulemaking to adopt federal requirements, criteria, and regulations necessary to obtain assumption of the section 404 permitting program and must adopt by rule an expedited permit review process for the reissuance of all state administered section 404 permits. The bill may also result in increased costs to DEP for processing the additional section 404 permits. However, DEP has indicated that it can absorb the additional workload within existing resources. DEP does not anticipate an increase in permitting administration expenditures and believes that, upon assumption, the processing of state 404 permits, as well as enforcement activities for state 404 permits, can be absorbed without an increase in staffing or administrative costs.<sup>89</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 373.4146 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

By Senator Simmons

9-00612D-18

20181402\_\_

1                   A bill to be entitled  
2       An act relating to state assumption of federal section  
3       404 dredge and fill permitting authority; creating s.  
4       373.4146, F.S.; defining the term "state assumed  
5       waters"; providing the Department of Environmental  
6       Protection with the power and authority to adopt rules  
7       to assume and implement the section 404 dredge and  
8       fill permitting program pursuant to the federal Clean  
9       Water Act; specifying that certain rules, standards,  
10      or other requirements are not effective or enforceable  
11      until such assumption is approved; providing  
12      legislative intent; providing applicability of other  
13      state law regulating discharges; specifying the  
14      applicability of certain exemptions; specifying  
15      department authority upon assumption of the section  
16      404 dredge and fill permitting program; specifying  
17      certain procedures for permit applications; exempting  
18      the department from certain permitting timeframe  
19      limitations upon such assumption; specifying the  
20      maximum dredge and fill permit period for activities  
21      in state assumed waters; specifying certain procedures  
22      for permit reissuance; requiring the department to  
23      adopt rules to create an expedited permit review  
24      process; specifying applicability of certain  
25      administrative procedures; authorizing the department  
26      to delegate certain activities; specifying that the  
27      department must retain the authority to review,  
28      modify, revoke, or rescind any permit authorizing  
29      activities in state assumed waters which is issued by

9-00612D-18

20181402\_\_

30 a delegated entity; providing an effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Section 373.4146, Florida Statutes, is created  
35 to read:

36 373.4146 State assumption of the federal Clean Water Act,  
37 section 404 dredge and fill permitting program.-

38 (1) As used in this section, the term "state assumed  
39 waters" means waters of the United States that the state assumes  
40 permitting authority over pursuant to s. 404 of the Clean Water  
41 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,  
42 and rules promulgated thereunder, for the purposes of permitting  
43 the discharge of dredge or fill material.

44 (2) The department has the power and authority to assume,  
45 in accordance with 40 C.F.R. part 233, the dredge and fill  
46 permitting program established in s. 404 of the Clean Water Act,  
47 Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and  
48 rules promulgated thereunder. The department may adopt any  
49 federal requirements, criteria, or regulations necessary to  
50 obtain assumption, including, but not limited to, the guidelines  
51 specified in 40 C.F.R. part 230 and the public interest review  
52 criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other  
53 requirement adopted pursuant to the authority granted in this  
54 subsection for purposes of obtaining assumption may not become  
55 effective or otherwise enforceable until the United States  
56 Environmental Protection Agency has approved the state's  
57 assumption application. This legislative authority is intended  
58 to be sufficient to enable the department to assume and

9-00612D-18

20181402\_\_

59 implement the federal section 404 dredge and fill permitting  
60 program in conjunction with the environmental resource  
61 permitting program established in this chapter.

62 (3) To the extent that state law applies and does not  
63 conflict with the federal requirements identified in subsection  
64 (2), the application of such state law to further regulate  
65 discharges in state assumed waters is not prohibited. Provisions  
66 of state law which conflict with the federal requirements  
67 identified in subsection (2) do not apply to state administered  
68 section 404 permits.

69 (4) A state administered section 404 permit is not required  
70 for activities as specified in 33 U.S.C. s. 1344(f), 40 C.F.R.  
71 s. 232.3, or 33 C.F.R. s. 323.4. The exemptions established in  
72 ss. 373.406, 373.4145, and 403.813 still apply to environmental  
73 resource permits. However, the exemptions identified in ss.  
74 373.406, 373.4145, and 403.813 may not be applied to state  
75 administered section 404 permits.

76 (5) Upon state assumption of the section 404 dredge and  
77 fill permitting program pursuant to subsection (2):

78 (a) The department must grant or deny an application for a  
79 state administered section 404 permit within the time allowed  
80 for permit review under 40 C.F.R. part 233, subparts D and F.  
81 The department is specifically exempted from the time  
82 limitations provided in ss. 120.60 and 373.4141 for state  
83 administered section 404 permits.

84 (b) All state administered section 404 permits issued under  
85 this section must be for a period of no more than 5 years. Upon  
86 an applicant's submittal of a timely application for reissuance,  
87 a state administered section 404 permit does not expire until

9-00612D-18

20181402\_\_

88 the department takes final action upon the application or until  
89 the last day for seeking judicial review of the agency order or  
90 a later date fixed by order of the reviewing court. If the  
91 department fails to render a permitting decision within the time  
92 allowed by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as  
93 amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R. part 233,  
94 subparts D and F, or a memorandum of agreement executed by the  
95 department and the United States Environmental Protection  
96 Agency, whichever is shorter, the applicant may apply for an  
97 order from the circuit court requiring the department to render  
98 a decision within a specified time. The department must adopt by  
99 rule an expedited permit review process that is consistent with  
100 federal law for the reissuance of state administered section 404  
101 permits where there have been no material changes in the scope  
102 of the project as originally permitted, site and surrounding  
103 environmental conditions have not changed, and the applicant  
104 does not have a history of noncompliance with the existing  
105 permit. The decision by the department to approve the reissuance  
106 of any state administered section 404 permit issued pursuant to  
107 this section is subject to ss. 120.569 and 120.57 only with  
108 respect to any material permit modification or material changes  
109 in the scope of the project as originally permitted.

110 (c) The department may delegate administration of the state  
111 administered section 404 permitting program if such delegation  
112 is in accordance with federal law. The department must retain  
113 the authority to review, modify, revoke, or rescind a state  
114 administered section 404 permit issued by any delegated entity  
115 to ensure consistency with federal law.

116 Section 2. This act shall take effect upon becoming a law.



**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: CS/SB 1664

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simmons

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: January 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Fav/CS
2.			AEN	
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1664:

- Requires the development of an onsite sewage treatment and disposal system remediation plan as part of a basin management action plan (BMAP) if DEP determines that remediation is necessary to meet a total maximum daily load (TMDL).
- Authorizes DEP to identify one or more priority focus areas in order to promote cost-effective remediation.
- Requires DEP, as part of the development of a BMAP to:
  - Evaluate the need for the creation or improvement of wastewater treatment facilities to meet a TMDL; and
  - Identify funding sources available to the relevant local governments for the creation or improvement of wastewater treatment facilities.
- Authorizes and encourages DEP and the relevant WMDs to enter into cost-share agreements with the relevant local governments for the creation or improvement of wastewater treatment facilities.
- Provides criteria for projects to which DEP must give priority for funding purposes.
- Provides that onsite sewage treatment and disposal systems on lots of 1 acre or less must conform to the requirements of the remediation plan.
- Requires DEP to help develop a public education plan about water pollution from onsite sewage treatment and disposal systems.

## II. Present Situation:

### Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.<sup>1</sup> Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the Department of Environmental Protection (DEP) is required to establish a TMDL for impaired waterbodies.<sup>2</sup> A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.<sup>3</sup> Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.<sup>4</sup>

### Basin Management Action Plans and Best Management Practices

DEP is the lead agency in coordinating the development and implementation of TMDLs. basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including best management practices (BMPs), cost sharing, waste minimization, pollution prevention, agreements, and public education;<sup>5</sup>
- Public works projects, including capital facilities; and
- Land acquisition.<sup>6</sup>

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.<sup>7</sup> Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution

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<sup>1</sup> Section 403.067, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 403.031(21), F.S.

<sup>4</sup> Fla. Admin. Code R. 62-620.200(37). Point source means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

<sup>5</sup> Section 403.061, F.S., grants the Department of Environmental Protection (DEP) the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>6</sup> Section 403.067(7), F.S.

<sup>7</sup> *Id.*

reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.<sup>8</sup>

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every 5 years and revisions to the BMAP must be made as appropriate.<sup>9</sup>

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.<sup>10</sup> A nonpoint source discharger may be subject to enforcement action by DEP or a water management district (WMD) based on a failure to implement these requirements.<sup>11</sup> BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, silviculture (forestry) operations, and stormwater management.<sup>12</sup>

## Sources of Pollutants

### *Onsite sewage and disposal systems*

Onsite sewage treatment and disposal systems, hereafter referred to as septic systems, can contain any one of the following components: a septic tank; a subsurface drainfield; an aerobic treatment unit; a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless incinerating or organic waste-composting toilet; and a sanitary pit privy.<sup>13</sup> Septic systems are located underground and treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids settle out. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.<sup>14</sup>

The Department of Health (DOH) administers septic system programs, develops statewide rules, and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state.<sup>15</sup> An

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<sup>8</sup> DEP, *Basin Management Action Plans (BMAPs)*, available at <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited January 17, 2018).

<sup>9</sup> Section 403.067(7)(a)5., F.S.

<sup>10</sup> Section 403.067(7)(b)2.g., F.S. BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

<sup>11</sup> Section 403.067(7)(b)2.h., F.S.

<sup>12</sup> DEP, *NPDES Stormwater Program*, available at <https://floridadep.gov/Water/Stormwater> (last visited January 19, 2018).

<sup>13</sup> DEP, *Wastewater: Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited January 17, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> Section 381.0065(3), F.S.

estimated 2.7 million septic systems are in use statewide, serving approximately one third of the state's population.<sup>16</sup>

In Florida, development in some areas is dependent on septic systems due to the cost and time it takes to install central sewer systems. For example, in rural areas and low-density developments, central sewer systems are not cost effective. Less than one percent of septic systems in Florida are actively managed.<sup>17</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>18</sup> In Florida, approximately 30-40 percent of the nitrogen levels are reduced in a system that is installed 24 inches or more from groundwater.<sup>19</sup> This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from septic systems a potential contaminant in groundwater.<sup>20</sup> Nitrogen sensitivity of Florida watersheds varies greatly, and includes areas of extremely high sensitivity to nitrogen loading and other areas where nitrogen loading from septic systems may be less critical.<sup>21</sup>

Section 373.807(3), F.S., requires DEP, DOH, relevant local governments, and relevant local public and private wastewater utilities to develop septic system remediation plans as part of a BMAP that includes an Outstanding Florida Spring,<sup>22</sup> if DEP determines that septic systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if DEP determines remediation is necessary to achieve the TMDL. The remediation plan must include cost-effective and financially feasible projects necessary to reduce the nutrient impacts from septic systems within the area.<sup>23</sup>

### **Wastewater Treatment Facilities**

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. Management of wastewater is necessary to protect public health, water quality, and recreational and environmental values. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 1,900 permitted domestic wastewater treatment facilities.<sup>24</sup>

Chapter 403, F.S., requires that any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP. Generally, persons who intend to collect, transmit, treat, dispose or reuse wastewater

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<sup>16</sup> Florida Department of Health (DOH), *Florida Onsite Sewage Nitrogen Reduction Strategies Study Final Report*, 17 (Dec. 31, 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/10212016-finalnitrogenreport.pdf> (last visited January 17, 2018).

<sup>17</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited January 17, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 18.

<sup>20</sup> University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited January 17, 2018).

<sup>21</sup> DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study Final Report*, 14 (December 31, 2015).

<sup>22</sup> See s. 373.802, F.S., for the definition of the term "Outstanding Florida Spring."

<sup>23</sup> Section 373.807(3), F.S.

<sup>24</sup> DEP, *General Facts and Statistics about wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited January 19, 2018).

are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.<sup>25</sup>

The National Pollution Discharge Elimination System (NPDES) Program is a federal program established by the Clean Water Act (CWA) to control point source and stormwater discharges.<sup>26</sup> Under section 402 of the CWA, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain an NPDES permit. The NPDES permit requires compliance with both technology-based as well as surface water quality standards (e.g., Water Quality Based Effluent Limitations or WQBELs).<sup>27</sup>

Wastewater facilities that discharge to surface waters are subject to NPDES program requirements. In 1995, DEP received authorization from the U.S. Environmental Protection Agency to administer the NPDES wastewater program in Florida. Since that time, federal NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.<sup>28</sup>

According to the American Society of Civil Engineers, the state's wastewater system is increasing in age and the condition of installed treatment and conveyance systems is declining. As existing infrastructure ages, Florida utilities are placing greater emphasis on asset management systems to maintain service to customers. Florida is a national leader in reclaimed water use, which helps offset the state's potable water needs and is a vital component of water resource and ecosystem management, but population growth, aging infrastructure, and sensitive ecological environments are increasing the need to invest in Florida's wastewater infrastructure. Florida is projected to have \$18.4 billion in wastewater infrastructure needs over the next 20 years.<sup>29</sup>

## **Water Project Funding Sources**

### ***Clean Water State Revolving Fund***

Florida's Clean Water State Revolving Fund is funded through money received from federal grants as well as state contributions. These funds then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage that the community qualifies. The Clean Water State Revolving Fund Program provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural

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<sup>25</sup> DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited January 18, 2018).

<sup>26</sup> 33 U.S.C. s. 1342.

<sup>27</sup> DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited January 18, 2018).

<sup>28</sup> Sections 403.061, 403.087, F.S.

<sup>29</sup> American Society of Civil Engineers, *2016 Florida Infrastructure Report Card*, available at <https://www.infrastructurereportcard.org/state-item/florida/> (last visited January 18, 2018).

best management practices may also qualify for funding. Very low interest rate loans, grants and other discounted assistance for small communities is available. Interest rates on loans are below market rates and vary based on the economic wherewithal of the community. Generally, local governments and special districts are eligible loan sponsors.<sup>30</sup>

The priority given to funding an eligible project is dependent upon the extent the project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits are also taken into consideration. DEP must give priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies;
- Assist in the implementation of total maximum daily loads adopted under this section;
- Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
- Promote reclaimed water reuse;
- Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.<sup>31</sup>

DEP has adopted a priority system by rule.<sup>32</sup>

### ***Small Community Sewer Construction***

The Small Community Sewer Construction Assistance Act requires DEP to use funds specifically appropriated to award grants to assist financially disadvantaged small communities<sup>33</sup> with their needs for adequate sewer facilities. DEP may provide grants for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.

### **III. Effect of Proposed Changes:**

CS/SB 1664 requires the Department of Environmental Protection (DEP), the Department of Health, relevant local governments, and relevant local public and private wastewater utilities to develop an onsite sewage treatment and disposal system remediation plan, as part of a basin management action plan (BMAP), if DEP determines that remediation is necessary to achieve a total maximum daily load (TMDL). The bill provides that in order to promote cost-effective remediation, DEP is authorized to identify one or more priority focus areas.

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<sup>30</sup> DEP, *State Revolving Fund*, available at <https://floridadep.gov/wra/srf> (last visited January 18, 2018).

<sup>31</sup> Section 403.1835(7), F.S.

<sup>32</sup> Fla. Admin. Code R. 62-503.300.

<sup>33</sup> A “financially disadvantaged small community” is a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

The bill requires DEP to identify priority focus areas by considering:

- Soil conditions;
- Groundwater or surface water travel time;
- Proximity to surface waters, including predominantly marine waters as defined by DEP rule;
- Hydrogeology;
- Onsite system density;
- Nutrient load; and
- Other factors that may lead to water quality degradation.

The remediation plan must identify cost-effective and financially feasible projects that are necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems. The plan is required to be completed and adopted as part of the BMAP within 5 years of the effective date of the bill.

The bill provides that DEP is the lead agency in coordinating the preparation and adoption of the remediation plan. In developing and adopting the plan, DEP must:

- Collect and evaluate credible scientific information on the effect of nutrients on surface and groundwater;
- Work with local stakeholders to develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and surface and groundwater pollution;
- Ensure that the plan includes options, if appropriate, for:
  - System repair, upgrade, or replacement;
  - Drainfield modification;
  - The addition of effective nutrient-reducing features;
  - Connection to a central sewerage system; or
  - Other actions addressing onsite sewage treatment and disposal system issues.
- Include in the plan a priority ranking for each onsite system, or group of systems, that requires remediation. The priority ranking must be used to ensure the most effective, efficient use of the funding provided for onsite system remediation. In awarding funds for onsite system remediation, DEP may consider the:
  - Expected nutrient reduction benefit per unit cost;
  - Size and scope of the project;
  - Local financial contribution to the project relative to the overall cost; and
  - Financial impact on property owners and the community; and
- Ensure that the plan includes an implementation schedule for completion of the actions related to reducing onsite sewage treatment and disposal system nutrient loads, with milestones, periodic progress evaluations, and a completion date necessary to achieve the TMDL within the timeframe established in the BMAP.

For the purpose of awarding funds, DEP is authorized, at its discretion, to totally or partially waive consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656, F.S.

The bill requires that the installation, repair, modification, or upgrade of onsite sewage treatment and disposal systems on lots of 1 acre or less within the boundaries of a BMAP with an onsite sewage treatment and disposal system remediation plan must conform to the requirements of the remediation plan.

The bill requires DEP, as part of the development of a BMAP, to:

- Evaluate the need for the creation or improvement of wastewater treatment facilities to meet a TMDL; and
- Identify funding sources available to the relevant local governments for the creation or improvement of wastewater treatment facilities. The bill authorizes and encourages DEP and the relevant WMDs to enter into cost-share agreements with the relevant local governments for the creation or improvement of wastewater treatment facilities.

If a wastewater treatment facility is identified for funding, DEP and the WMDs must give priority to projects according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or groundwater quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during DEP's or the WMD's assignment of project priorities.

DEP must adopt a priority system by rule. In developing the priority system, DEP or the WMD must give priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies;
- Assist in the implementation of total maximum daily loads;
- Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
- Promote reclaimed water reuse;
- Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- Reduce pollutants to and otherwise promote the restoration of Florida's surface and groundwater.

The bill has an effective date of July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.



C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Within local government areas where septic systems represent a significant water quality problem, now or in the future, as determined by DEP, some property owners may be required as a result of the BMAP process to upgrade or replace their septic systems or connect to an available central sewer system, which would result in a negative, indeterminate cost to property owners. However, this cost may be offset by state, WMD, or local government contributions.

C. Government Sector Impact:

The bill may have a positive, indeterminate impact on local governments from increased DEP or WMD funding through cost-share agreements.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 403.067 of the Florida Statutes.

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 Environmental Preservation and Conservation on January 22, 2018:**

- Removes the requirement that DEP, DOH, and relevant local governments and local public and private wastewater utilities develop a public wastewater treatment plant remediation plan as part of a BMAP.
- Removes references to a public wastewater treatment plant remediation plan from the bill.
- Requires onsite sewage treatment and disposal system remediation plans required by the bill to be in place within five years of the effective date of the bill.

- Adds requirements that DEP, as part of the development of a BMAP:
  - Evaluate the need for the creation or improvement of wastewater treatment facilities to meet a TMDL; and
  - Identify funding sources available to the relevant local governments for the creation or improvement of wastewater treatment facilities.
- Authorizes and encourages DEP and the relevant WMDs to enter into cost-share agreements with the relevant local governments for the creation or improvement of wastewater treatment facilities.
- Provides that, if wastewater treatment facilities are identified for funding in a BMAP, the priority given to funding an eligible project is dependent upon the extent to which the project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits are also taken into consideration. DEP must give priority to projects that:
  - Eliminate public health hazards;
  - Enable compliance with laws requiring the elimination of discharges to specific water bodies;
  - Assist in the implementation of total maximum daily loads;
  - Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
  - Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
  - Promote reclaimed water reuse;
  - Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
  - Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

B. Amendments:

None.



499170

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
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The Committee on Environmental Preservation and Conservation (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Present paragraph (d) of subsection (7) of section 403.067, Florida Statutes, is redesignated as paragraph (f), and new paragraphs (d) and (e) are added to that subsection, to read:

403.067 Establishment and implementation of total maximum daily loads.-



499170

11 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
12 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

13 (d) Onsite sewage treatment and disposal systems.—

14 1. For purposes of this paragraph, "onsite sewage treatment  
15 and disposal system" has the same meaning as in s. 381.0065.

16 2. As part of a basin management action plan, the  
17 department, the Department of Health, relevant local  
18 governments, and relevant local public and private wastewater  
19 utilities must develop an onsite sewage treatment and disposal  
20 system remediation plan if the department determines that  
21 remediation is necessary to achieve a total maximum daily load.

22 In order to promote cost-effective remediation, the department  
23 may identify one or more priority focus areas. The department  
24 shall identify these areas by considering soil conditions;  
25 groundwater or surface water travel time; proximity to surface  
26 waters, including predominantly marine waters as defined by  
27 department rule; hydrogeology; onsite system density; nutrient  
28 load; and other factors that may lead to water quality  
29 degradation. The remediation plan must identify cost-effective  
30 and financially feasible projects necessary to reduce the  
31 nutrient impacts from onsite sewage treatment and disposal  
32 systems. The plan shall be completed and adopted as part of the  
33 basin management action plan within 5 years of the effective  
34 date of this act. The department is the lead agency in  
35 coordinating the preparation and adoption of the plan. In  
36 developing and adopting the plan, the department shall:

37 a. Collect and evaluate credible scientific information on  
38 the effect of nutrients on surface and groundwaters;

39 b. Work with local stakeholders to develop a public



499170

40 education plan to provide area residents with reliable,  
41 understandable information about onsite sewage treatment and  
42 disposal systems and surface and groundwater pollution;  
43 c. Ensure that the plan includes options, if appropriate,  
44 for system repair, upgrade, or replacement; drainfield  
45 modification; the addition of effective nutrient-reducing  
46 features; connection to a central sewerage system; or other  
47 actions addressing onsite sewage treatment and disposal system  
48 issues. The department shall include in the plan a priority  
49 ranking for each onsite system, or group of systems, that  
50 requires remediation. The priority ranking shall be used to  
51 ensure the most effective, efficient use of the funding provided  
52 for onsite system remediation. In awarding any such funds, the  
53 department may consider expected nutrient reduction benefit per  
54 unit cost, the size and scope of the project, local financial  
55 contribution to the project relative to the overall cost, and  
56 the financial impact on property owners and the community. For  
57 the purpose of awarding funds, the department may, at its  
58 discretion, totally or partially waive this consideration of the  
59 local contribution for proposed projects within an area  
60 designated as a rural area of opportunity under s. 288.0656; and  
61 d. Ensure that the plan includes an implementation schedule  
62 for completion of the actions related to reducing onsite sewage  
63 treatment and disposal system nutrient loads, with milestones,  
64 periodic progress evaluations, and a completion date necessary  
65 to achieve the total maximum daily load within the timeframe  
66 established in the basin management action plan.  
67 3. The installation, repair, modification, or upgrade of  
68 onsite sewage treatment and disposal systems on lots of 1 acre



499170

69 or less and within the boundaries of a basin management action  
70 plan with an onsite sewage treatment and disposal remediation  
71 plan must conform to the requirements of the remediation plan.

72 (e) *Wastewater treatment facilities.*—As part of the basin  
73 management action plan, the department shall evaluate the need  
74 for the creation or improvement of wastewater treatment  
75 facilities to meet the total maximum daily load. The department  
76 shall identify funding sources available to the relevant local  
77 governments for the creation or improvement of wastewater  
78 treatment facilities. The department and the relevant water  
79 management districts are authorized and encouraged to enter into  
80 cost-share agreements with the relevant local governments for  
81 the creation or improvement of wastewater treatment facilities.  
82 If a wastewater treatment facility is identified for funding  
83 pursuant to this paragraph, the department and the water  
84 management districts shall give priority to projects according  
85 to the extent each project is intended to remove, mitigate, or  
86 prevent adverse effects on surface or groundwater quality and  
87 public health. The relative costs of achieving environmental and  
88 public health benefits must be taken into consideration during  
89 the department's or water management district's assignment of  
90 project priorities. The department shall adopt a priority system  
91 by rule. In developing the priority system, the department or  
92 water management district shall give priority to projects that:

- 93 1. Eliminate public health hazards;  
94 2. Enable compliance with laws requiring the elimination of  
95 discharges to specific water bodies;  
96 3. Assist in the implementation of total maximum daily  
97 loads adopted under this section;



499170

98           4. Enable compliance with other pollution control  
99 requirements, including, but not limited to, toxics control,  
100 wastewater residuals management, and reduction of nutrients and  
101 bacteria;

102           5. Assist in the implementation of surface water  
103 improvement and management plans and pollutant load reduction  
104 goals developed under state water policy;

105           6. Promote reclaimed water reuse;

106           7. Eliminate failing onsite sewage treatment and disposal  
107 systems or those that are causing environmental damage; or

108           8. Reduce pollutants to and otherwise promote the  
109 restoration of Florida's surface and groundwaters.

110           Section 2. Division of Law Revision and Information is  
111 directed to replace the phrase "the effective date of this act"  
112 wherever it occurs in this act with the date the act becomes a  
113 law.

114           Section 3. This act shall take effect July 1, 2018.

116 ===== T I T L E   A M E N D M E N T =====

117 And the title is amended as follows:

118           Delete everything before the enacting clause  
119 and insert:

120                                   A bill to be entitled  
121           An act relating to basin management action plans;  
122           amending s. 403.067, F.S.; defining "onsite sewage  
123           treatment and disposal system"; requiring the  
124           Department of Environmental Protection and other  
125           entities, as part of a basin management action plan,  
126           to develop onsite sewage treatment and disposal system



499170

127 remediation plans under certain conditions; specifying  
128 parameters for selecting priority focus areas for  
129 remediation; specifying the parameters for developing  
130 and adopting a remediation plan; specifying  
131 requirements for the installation, repair,  
132 modification, or upgrade of certain onsite sewage  
133 treatment and disposal systems; requiring the  
134 department to evaluate the need for the creation or  
135 improvement of wastewater treatment facilities;  
136 authorizing funding; providing criteria for the  
137 prioritization of funding for wastewater treatment  
138 facilities; requiring the department to develop rules;  
139 providing a directive the Division of Law Revision and  
140 Information; providing an effective date.



By Senator Simmons

9-01312A-18

20181664\_\_

1                   A bill to be entitled  
2       An act relating to onsite sewage treatment and  
3       disposal systems; amending s. 403.067, F.S.; defining  
4       the term "onsite sewage treatment and disposal  
5       system"; requiring the Department of Environmental  
6       Protection and other entities, as part of a basin  
7       management action plan, to develop onsite sewage  
8       treatment and disposal system remediation plans and  
9       public wastewater treatment plant remediation plans  
10      under certain conditions; specifying parameters for  
11      selecting priority focus areas for remediation;  
12      specifying the requirements for developing and  
13      adopting a remediation plan; requiring such plans to  
14      be completed within a certain timeframe; authorizing  
15      the department to waive a certain consideration for  
16      rural areas of opportunity; specifying required  
17      funding for remediation of wastewater treatment  
18      plants; directing water management districts to create  
19      bondable segregated accounts; specifying that the  
20      installation, repair, modification, or upgrade of  
21      certain onsite sewage treatment and disposal systems  
22      must conform to remediation plan requirements;  
23      providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27       Section 1. Present paragraph (d) of subsection (7) of  
28       section 403.067, Florida Statutes, is redesignated as paragraph  
29       (e), and a new paragraph (d) is added to that subsection, to

9-01312A-18

20181664\_\_

30 read:

31 403.067 Establishment and implementation of total maximum  
32 daily loads.-

33 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
34 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.-

35 (d) Onsite sewage treatment and disposal systems and public  
36 wastewater treatment plants.-

37 1. For purposes of this section, "onsite sewage treatment  
38 and disposal system" has the same meaning as in s. 381.0065.

39 2. As part of a basin management action plan, the  
40 department, the Department of Health, relevant local  
41 governments, and relevant local public and private wastewater  
42 utilities must develop both an onsite sewage treatment and  
43 disposal system remediation plan and a public wastewater  
44 treatment plant remediation plan if the department determines  
45 that remediation is necessary to achieve a total maximum daily  
46 load. In order to promote cost-effective remediation, the  
47 department may identify one or more priority focus areas. The  
48 department shall identify these areas by considering soil  
49 conditions; groundwater or surface water travel time; proximity  
50 to surface waters, including predominantly marine waters as  
51 defined by department rule; hydrogeology; onsite system density;  
52 nutrient load; and other factors that may lead to water quality  
53 degradation. The remediation plan must identify cost-effective  
54 and financially feasible projects necessary to reduce the  
55 nutrient impacts from onsite sewage treatment and disposal  
56 systems and local government owned or operated wastewater  
57 treatment plants. The plan shall be completed and adopted as  
58 part of the basin management action plan no later than the first

9-01312A-18

20181664\_\_

59 5-year milestone assessment identified in subparagraph (a)6. The  
60 department is the lead agency in coordinating the preparation  
61 and adoption of the plan. In developing and adopting the plan,  
62 the department shall:

63 a. Collect and evaluate credible scientific information on  
64 the effect of nutrients on surface and groundwater;

65 b. Work with local stakeholders to develop a public  
66 education plan to provide area residents with reliable,  
67 understandable information about onsite sewage treatment and  
68 disposal systems, local government owned or operated or public  
69 utility wastewater treatment facilities, and the impact of such  
70 on surface and groundwater pollution;

71 c. Ensure that the plan includes options, if appropriate,  
72 for system repair, upgrade, or replacement; drainfield  
73 modification; the addition of effective nutrient-reducing  
74 features; connection to a central sewerage system; or other  
75 actions addressing onsite sewage treatment and disposal system  
76 issues and local government owned or operated wastewater  
77 treatment facilities. The department shall include in the plan a  
78 priority ranking for each onsite system, or group of systems,  
79 and for each local government owned or operated wastewater  
80 treatment facility that requires remediation. The priority  
81 ranking shall be used to ensure the most effective, efficient  
82 use of the funding provided for onsite system and wastewater  
83 treatment remediation. In awarding any such funds, the  
84 department may consider the expected nutrient reduction benefit  
85 per unit cost, the size and scope of the project, the local  
86 financial contribution to the project relative to the overall  
87 cost, and the financial impact on property owners and the

9-01312A-18

20181664\_\_

88 community. For the purpose of awarding funds, the department  
89 may, at its discretion, totally or partially waive this  
90 consideration of the local contribution for proposed projects  
91 within an area designated as a rural area of opportunity under  
92 s. 288.0656;

93 d. Ensure that the plan includes an implementation schedule  
94 for completion of the actions related to reducing onsite sewage  
95 treatment and disposal system nutrient loads and wastewater  
96 treatment facility nutrient loads, with milestones, periodic  
97 progress evaluations, and a completion date necessary to achieve  
98 the total maximum daily load within the timeframe established in  
99 the basin management action plan; and

100 e. Ensure that any wastewater treatment facility  
101 remediation plan developed pursuant to this section includes the  
102 funding by either the department or the applicable water  
103 management districts where the wastewater treatment plant is  
104 located of no more than 50 percent of the remediation plan  
105 costs, including installation of infrastructure, and at least 50  
106 percent funding by the local government that owns or operates  
107 the wastewater treatment facility. Each water management  
108 district must create bondable segregated accounts in order to  
109 implement this section.

110 3. The installation, repair, modification, or upgrade of  
111 onsite sewage treatment and disposal systems on lots of 1 acre  
112 or less and within the boundaries of a basin management action  
113 plan having an onsite sewage treatment and disposal system  
114 remediation plan must conform to the requirements of the  
115 remediation plan.

116 Section 2. This act shall take effect July 1, 2018.



*January 19, 2018*

The Honorable Rob Bradley  
Chairman  
Senate Committee on Environmental Preservation and Conservation  
404 S. Monroe Street  
Tallahassee, FL 32399

**Testimony on Committee Amendment to Senate Bill 1308**

Dear Chairman Bradley:

On behalf of the Glass Packaging Institute (GPI), I want to offer our response to the proposed Committee Amendment for Senate Bill 1308, which would fundamentally shift metrics and requirements of future recycling contracts for municipalities and cities in Florida.

GPI is the North American trade association for the glass container manufacturers, glass recyclers, and suppliers of materials, equipment and transport to the industry. Our member companies produce the vast majority of U.S. food and beverage glass containers purchased in grocery stores and retail outlets. Collectively, the industry directly employs 18,000 Americans in glass container manufacturing and related recycling throughout the country. Glass is a 100% recyclable package, and one of the 8 “core” recyclables recognized by the state of Florida, feeding an existing end market in the Southeast.

GPI supports reducing contamination in recycling bins, but we are concerned about the impact the Committee Amendment may have on local glass markets. Legislation addressing contamination should not include references or requirements addressing local, available or viable markets.

The Committee Amendment to Senate Bill 1308, refers to, but does not define, “availability of local markets.” This potentially opens the door for a hauler or recycling company to deem glass containers and other recyclable materials as “contaminated recyclables,” subjecting them to removal from recycling collection programs. End markets for recycled glass are often not measured by proximity, but by the quality of the glass within the program. This language also offers little stability for cities and municipalities that are expected to provide recycling services to their constituents.

GPI also recommends a substantial phase-in period for any legislation addressing recycling contracts, so municipalities may have adequate time to discuss proposed changes with their recycling service providers and constituents.

GPI member companies both process (clean up) and purchase recycled container glass collected from municipal programs containers across the state of Florida, purchasing roughly 2.4 million tons of recycled glass nationwide. The average recycled glass content of a bottle in the US is about 33%.

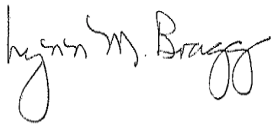
When glass plants increase the amount of recycled glass added to the raw materials used to make glass (sand, soda ash and limestone), furnace temperatures can be reduced, resulting in less energy use and lower greenhouse gas emissions. This is a win for the glass companies with respect to energy costs, as well a win for consumers and the environment.

GPI and member companies have worked closely with the recycling supply chain to address challenges related to solid waste and other non-recyclables that are processed at materials recovery facilities, and to better improve the yield and quality of recycled glass containers available for sale to the end markets.

By weight, glass containers on average comprise 25% of a curbside recycling program's volume. A 2017 survey conducted by the Glass Recycling Coalition found that 96% of residents expect to be able to recycle glass containers. Glass containers are a key part of recycling programs.

GPI looks forward to supporting legislation that would reduce recycling-related contamination in the state, but without references to local, available or viable markets. Thank you for your consideration of our testimony in response to Senate Bill 1308's Committee Amendment.

Sincerely,

A handwritten signature in black ink that reads "Lynn M. Bragg". The signature is written in a cursive style with a large, looped initial "L".

Lynn M. Bragg  
President

Cc: Members, Senate Committee on Environmental Preservation and Conservation



**VIA ELECTRONIC MAIL**

January 22, 2018

The Honorable Rob Bradley  
Chairman  
Senate Committee on the Environmental Preservation and Conservation  
404 S. Monroe Street  
Tallahassee, FL 32399

RE: Comments on Senate Bill 1308

Dear Chairman Bradley:

On behalf of the North American Insulation Manufacturers Association (“NAIMA”), I am pleased to offer the following comments on Senate Bill 1308, which would fundamentally shift metrics and requirements of future recycling contracts for municipalities and cities in Florida.

NAIMA supports the intent of this Bill to reduce contamination in recycling bins, resulting from the introduction of non-recyclable materials. Glass is a 100% recyclable package, and one of the 8 “core” recyclables recognized by the state of Florida, feeding an existing end market in the Southeast.

NAIMA is the North American trade association for the fiber glass and mineral wool insulation manufacturers. NAIMA’s fiber glass insulation manufacturing members – Owens Corning, Johns Manville, Knauf, and CertainTeed – each have significant operations in the southeast, including a fiber glass insulation manufacturing facility in Lakeland, Florida. These operations manufacture residential insulation, commercial and industrial insulation, and many other types of fiber glass insulation products.

These southeast operations provide many jobs and generate significant revenues for state and local governments. These southeast fiber glass operations together employ well over 730 workers, some represented by the Glass, Potters, and Molders Union, and provide well over 2,700 indirect employment opportunities in the State of Florida.

Since 1992, NAIMA has conducted an annual survey of member companies to determine the volume of glass cullet used by NAIMA’s members. The most recent survey showed that in 2016, NAIMA’s member companies in the United States used more than 1.8 billion pounds of recycled glass. The data for Canadian facilities showed that in 2016, 346 million pounds of recycled glass was used in the production of fiber glass insulation. That is a total of 2 billion pounds of recycled glass used in 2016.

The Honorable Rob Bradley

January 22, 2018

Page 2

Since 1992, when NAIMA started collecting recycled data, 55 billion pounds of recycled material have been diverted from the waste stream. Fiber glass insulation manufacturers are the second largest user of glass cullet in the United States.

When fiber glass plants can increase the level of recycled glass as part of the overall batch mix, they can reduce furnace temperatures, resulting in reduced energy use and lower greenhouse gas emissions. This is a win for the glass companies with respect to energy costs, as well as the environment.

NAIMA supports reducing contamination in recycling bins. In fact, NAIMA and its member companies have worked closely with the recycling supply chain to address challenges related to solid waste and other non-recyclables that are processed at material recovery facilities, and to better improve the yield and quantity of glass containers being sorted.

Draft language associated with Senate Bill 1308 circulated over the past two weeks refers to, and does not define, “availability of local markets,” opening the potential opportunity for a hauler or recycling company to deem glass containers and other recyclable materials as “contaminated recyclables.” This would subject them to the 15% contamination rate threshold and removal from recycling programs. This language provides little certainty for cities and municipalities that are expected to provide recycling services to its constituents. End markets for recycled glass are often not measured by proximity, but by the quality of the glass within the program. NAIMA opposes any language surrounding “local, viable or available markets” for recyclables, as parameters and metrics cannot be clearly defined.

The Bill would also take effect immediately, allowing waste and recycling companies to alter existing recycling contracts with cities and municipalities, causing confusion among consumers as to what is recyclable and what is not. NAIMA urges a phase-in time period for any legislation addressing contamination of recyclable materials, so municipalities may have adequate time to discuss changes with their recycling service providers.

NAIMA would be willing to support legislation that would reduce recycling-related contamination in the state, without references to local, available or viable markets.

Thank you for your thoughtful consideration of NAIMA’s comments.

Sincerely,



Angus E. Crane

Executive Vice President, General Counsel



TAB 1

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

1308  
Bill Number (if applicable)

832374  
Amendment Barcode (if applicable)

Topic Environmental Regulation-Recycling

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222 9684

Tallahassee FL 32301  
City State Zip

Email rohara@flcities.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1308

Bill Number (if applicable)

832374

Amendment Barcode (if applicable)

Topic Environmental Regulation

Name Susan Harbin Alford

Job Title Public Policy, Associate Director

Address 100 S. Monroe St.

Street

Phone 770 546-8845

Tallahassee

City

FL

State

32301

Zip

Email sharbin@fl-counties.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this

TAB1

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

1308  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title \_\_\_\_\_

Address 1674 UNIVERSITY BLVD #295 Phone 941.323.2404  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Email cullenasee@ast.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1308  
SB ~~1308~~

Bill Number (if applicable)

Topic ENVIRONMENTAL REGULATIONS

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE

Phone 850 681 1065

Street TAWAHASSEE State FL Zip 32301  
City

Email keynac@pacinsthats.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing NATIONAL WASTE + RECYCLING ASSN FL CHAPTER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this time. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 22 2018

Meeting Date

1308

Bill Number (if applicable)

Topic Environmental Regulation

Amendment Barcode (if applicable)

Name David Childs

Job Title Counsel

Address 119 S. Monroe St Suite 300

Phone 850 222-7500

Street

Tallahassee

City

FL

State

32301

Zip

Email DAVIDC@HGLAW.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FWEA Utility Council & National Marine Manufacturers Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. The Chair will limit their remarks so that as many persons as possible can be heard.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/19

Meeting Date

1308

Bill Number (if applicable)

Topic WATER - Environmental Regulation

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy Director

Address 308 North Noyes St

Phone 954-593-4449

Tallahassee FL 32301

Email JWEBBER@FLCWR.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [X] Against (The Chair will read this information into the record.)

Representing FLORIDA CONSERVATION VOTERS

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

TAB 2

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/2018

Meeting Date

SB 1612

Bill Number (if applicable)

810164

Amendment Barcode (if applicable)

Topic Airboat Regulation

Name Captain Alan S. Richard

Job Title Captain, FWC/FMP (Retired); Professor of Admiralty Law

Address 333 Ball Drive

Street

Tallahassee

City

FL

State

32312

Zip

Phone 850-556-9955

Email alan.s.richard@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

*Meeting Date*

1612

*Bill Number (if applicable)*

Topic Airboat Regulation

*Amendment Barcode (if applicable)*

Name Lane Stephens

Job Title Lobbyist

Address 111 N. Calhoun St., Ste. 6

Phone 850-513-0004

*Street*

Tallahassee

FL

32301

Email lane@scggov.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Airboat Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/2018

Meeting Date

SB 1612

Bill Number (if applicable)

810164

Amendment Barcode (if applicable)

Topic Airboat Regulation

Name Captain Alan S. Richard

Job Title Captain, FWC/FMP (Retired); Professor of Admiralty Law

Address 333 Ball Drive

Street

Tallahassee

City

FL

State

32312

Zip

Phone 850-556-9955

Email alan.s.richard@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

TAB 3

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

SB 1402  
Bill Number (if applicable)

Topic Clean Water Act §404 delegation

Amendment Barcode (if applicable)

Name Julie Wraithmell

Job Title Interim Executive Director

Address 308 N. Monroe St.

Phone 850-339-5009

Tallah. FL 32301  
City State Zip

Email jwraithmell@audubon.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Audubon Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. The Chair will attempt to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1402  
Bill Number (if applicable)

\_\_\_\_\_  
Meeting Date

\_\_\_\_\_  
Amendment Barcode (if applicable)

Topic Dredge & Fill Permitting

Name Lisa Henning

Job Title Lobbyist

Address 242 Office Plaza Dr

Phone 850-766-8808

Tallahassee FL 32301  
City State Zip

Email lisa@timminsconsulting.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Marine Industries Association of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. The committee may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/14  
Meeting Date

1402  
Bill Number (if applicable)

Topic STATE Assumption of 404

Amendment Barcode (if applicable)

Name JIM SPRATT

Job Title \_\_\_\_\_

Address PO Box 10011

Phone 850-228-1296

TALLAHASSEE FL 32302  
City State Zip

Email Jim@magnoliastrategiesllc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Associated Industries of FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Persons wishing to speak are asked to limit their remarks so that as many persons as possible can be heard.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-22-18

Meeting Date

1402

Bill Number (if applicable)

Topic SB 1402 - State Assumption of 404

Amendment Barcode (if applicable)

Name Caitlin Brongel

Job Title Director of Ex. Affairs

Address 81 Water Mgmt. Drive

Phone (941) 400-8371

Street

Havana FL 32333

Email caitlin.brongel@owfwater.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Northwest Florida Water Mgmt. District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

1402  
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name DAVID COLLEN

Job Title \_\_\_\_\_

Address 1674 UNIVERSITY PKWY #295

Phone 941-323-2104

SAFAROCK FL 34843  
City State Zip

Email collen@saferock.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1402

Bill Number (if applicable)

Topic 404 delegation

Amendment Barcode (if applicable)

Name Kate Kelly

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Southwest Florida Water Management District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1402

Bill Number (if applicable)

Topic 404 Delegation

Amendment Barcode (if applicable)

Name Steve Minnik

Job Title Government Affairs Director

Address 9225 CR 49

Phone 386-362-1001

Street

Live Oak FL 32060

City

State

Zip

Email sminnik@fla.gov

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Suwannee River Water Management District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-22-18

Meeting Date

1402

Bill Number (if applicable)

Topic SB 1402

Amendment Barcode (if applicable)

Name Ryder Rudd

Job Title SVP McGuire Wood Consulting

Address 115-1 East Park Ave

Phone 850 727 5000

Street

Tallahassee FL 32301

City

State

Zip

Email rrudd@mwcllc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Nature Conservancy

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

1402  
Bill Number (if applicable)

Topic Dredge Fill Permitting

Amendment Barcode (if applicable)

Name Jennifer Wilson

Job Title Attorney/Lobbyist

Address 101 E. Kennedy Blvd., Suite 4000

Phone 813-407-0703

Tampa FL 33602  
City State Zip

Email jennifer.wilson@arkaw.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Conservancy of Southwest Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 22 2018  
Meeting Date

1402  
Bill Number (if applicable)

Topic Dredge & Fill Permitting Assumption

Amendment Barcode (if applicable)

Name David Childs

Job Title Legal Counsel

Address 119 S. Monroe St. Suite 300  
Street

Phone (850) 222-7500

Tallahassee FL 32301  
City State Zip

Email DAVIDC@HSLA.com

*Under*  
Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18

Meeting Date

1402

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name John Truitt

Job Title Deputy Secretary - Regulatory

Address 3900 Commonwealth Blvd  
Tallahassee, FL 32359

Phone 850-246-2140

Email John.truitt@dep.state.fl.us

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

TAB 4

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/18  
Meeting Date

1664  
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name DAVID CULLEN

Job Title \_\_\_\_\_

Address 1674 UNIVERSITY PARKWAY #286  
Street  
SARASOTA FL 34243  
City State Zip

Phone 914-323-2484

Email cullen@secd.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SIERRA CLUB FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Environmental Preservation and Conservation Committee

Judge:

Started: 1/22/2018 12:32:18 PM

Ends: 1/22/2018 1:47:52 PM

Length: 01:15:35

12:32:19 PM Call to Order  
12:32:22 PM Roll Call  
12:32:34 PM Quorum Present  
12:32:56 PM Tab 1 SB 1308  
12:33:07 PM SB 1308 Explained by Senator Perry  
12:34:15 PM Amendment Barcode 832374 Explained by Senator Perry  
12:35:24 PM Rebecca O'Hara rep. Florida League of Counties Speaks Providing Information  
12:37:47 PM Susan Harbin Alford rep. Florida Association of Counties Speaks Providing Information  
12:38:29 PM Senator Perry Closes Amendment Barcode 832374  
12:38:49 PM Amendment Barcode 832374 is Adopted  
12:39:11 PM Question from Senator Farmer  
12:40:09 PM Senator Perry Responds  
12:40:52 PM Question from Senator Farmer  
12:41:50 PM Senator Perry Responds  
12:42:54 PM David Cullen rep. Sierra Club Florida Speaks Against SB 1308  
12:46:13 PM Keyna Cory rep. National Waste and Recycling Assoc. FL Chapter Speaks in Support  
12:47:23 PM David Childs rep. FWEA Utility Council and Natl. Marine Manufacturers Assoc. Speaks in Support  
12:49:14 PM Jonathon Webber rep. Florida Conservation Voters Waives in Opposition of SB 1308  
12:49:28 PM Vice Chair Stewart in Debate  
12:50:11 PM Senator Farmer in Debate  
12:51:20 PM Senator Perry Closes on SB 1308  
12:53:02 PM Roll Call on SB 1308  
12:53:11 PM SB 1308 is Reported Favorably  
12:54:00 PM Tab 2 SB 1612  
12:54:33 PM SB 1612 Explained by Senator Book  
12:56:41 PM Amendment Barcode 810164 Explained by Senator Book  
12:58:05 PM Captain Alan S. Richard Speaks Providing Information on Amendment Barcode 810164  
1:00:40 PM Senator Book Closes on Amendment Barcode 810164  
1:00:54 PM Amendment Barcode 810164 is Adopted  
1:01:41 PM Lane Stephens rep. Florida Airboat Association Waives in Support of SB 1612  
1:01:48 PM Captain Alan S. Richard Speaks Providing Information on SB 1612  
1:08:19 PM Senator Book Closes on SB 1612  
1:09:06 PM Roll Call on SB 1612  
1:09:18 PM SB 1612 is Reported Favorably  
1:09:29 PM Tab 3 SB 1402  
1:09:40 PM Vice Chair Stewart takes over for Chair Bradley  
1:10:00 PM Senator Simmons Explains SB 1402  
1:13:55 PM Julie Wraithmell rep. Audubon Florida Speaks Providing Information  
1:16:19 PM Chair Bradley takes over for Vice Chair Stewart  
1:16:41 PM Lisa Henning rep. Marine Industries Association of Florida Waives in Support  
1:16:53 PM Jim Spratt rep. Associated Industries of Florida Waives in Support  
1:17:05 PM Caitlin Brongel rep. Northwest Florida Water Management District Waives in Support  
1:17:17 PM David Cullen rep. Sierra Club Florida Speaking Against SB 1402  
1:20:05 PM Katie Kelly rep. Southwest Florida Water Management District Waives in Support  
1:20:16 PM Steve Minnis rep. Suwannee River Water Management District Waives in Support  
1:20:34 PM Ryder Rudd rep. The Nature Conservancy Waives in Support  
1:21:15 PM Jennifer Wilson rep. The Conservancy of Southwest Florida Waives in Opposition  
1:21:26 PM David Childs rep. Florida Chamber of Commerce Waives in Support  
1:21:58 PM Question from Vice Chair Stewart  
1:22:39 PM Senator Simmons Responds  
1:23:39 PM Vice Chair Stewart Question for John Truitt rep. DEP  
1:24:37 PM Vice Chair Stewart Question for Senator Simmons

**1:25:54 PM** Senator Simmons Responds  
**1:26:55 PM** Back and Forth between Senator Simmons and Vice Chair Stewart  
**1:27:26 PM** Senator Farmer Question for Senator Simmons  
**1:28:09 PM** Senator Simmons Responds  
**1:30:04 PM** Senator Farmer Follow-up Question for Senator Simmons  
**1:30:49 PM** Senator Simmons Responds  
**1:32:25 PM** Senator Farmer Question for John Truitt rep. DEP  
**1:33:07 PM** John Truitt Responds  
**1:34:36 PM** Vice Chair Stewart in Debate  
**1:35:08 PM** Senator Farmer in Debate  
**1:36:49 PM** Senator Simmons Closes on SB 1402  
**1:37:56 PM** Roll Call on SB 1402  
**1:38:13 PM** SB 1402 is Reported Favorably  
**1:38:18 PM** Tab 4 SB 1664  
**1:38:46 PM** SB 1664 is Explained by Senator Simmons  
**1:38:58 PM** Strike-All Amendment Barcode 499170 Explained by Senator Simmons  
**1:43:56 PM** Senator Simmons Waives Close on Amendment on Barcode 499170  
**1:44:01 PM** Amendment Barcode 499170 is Adopted  
**1:44:24 PM** David Cullen rep. Sierra Club FL Speaks in Support of SB 1664  
**1:45:02 PM** Senator Simmons Closes on SB 1664  
**1:46:49 PM** Roll Call on SB 1664  
**1:47:03 PM** SB 1664 is Reported Favorably  
**1:47:21 PM** Meeting Adjourned  
**1:47:35 PM**