

Tab 1	CS/SB 1140 by JU, Hutson; (Similar to CS/CS/H 00829) Attorney Fees and Costs					
310490	A	S	RCS	CA, Hutson	Delete L.27 - 28:	04/03 02:29 PM
932614	A	S	RCS	CA, Hutson	Delete L.40:	04/03 02:29 PM
Tab 2	CS/SB 588 by CM, Hutson (CO-INTRODUCERS) Bradley; (Similar to CS/H 00603) Preemption of Local Regulations					
225460	D	S		CA, Hutson	Delete everything after	04/01 01:39 PM
Tab 3	SB 696 by Hutson; (Compare to CS/H 00267) Budgets of County Constitutional Officers					
169744	D	S		CA, Hutson	Delete everything after	04/01 01:12 PM
192866	SD	S		CA, Hutson	Delete everything after	04/02 12:13 PM
Tab 4	CS/SB 908 by BI, Hooper; (Compare to H 00647) Firesafety Systems					
384436	A	S	RCS	CA, Hooper	Delete L.146:	04/03 02:09 PM
541186	A	S	UNFAV	CA, Pizzo	Delete L.317:	04/03 02:09 PM
Tab 5	CS/SB 1708 by CM, Rouson (CO-INTRODUCERS) Hutson; Tourist Development Councils					
Tab 6	CS/SB 1758 by EN, Mayfield (CO-INTRODUCERS) Simmons, Harrell, Pizzo, Farmer, Gruters; (Compare to CS/H 00141) Water Quality Improvements					
781502	A	S	RCS	CA, Mayfield	Delete L.195 - 759:	04/03 03:09 PM
Tab 7	CS/SB 1200 by JU, Stargel; (Similar to CS/CS/H 01247) Construction Bonds					
Tab 8	SB 1508 by Simmons; (Similar to H 01081) Neighborhood Improvement Districts					
Tab 9	SB 1510 by Simmons; (Similar to H 01083) Trust Funds/Safe Neighborhood Improvement District Revolving Loan Trust Fund/Department of Legal Affairs					
498178	A	S	RCS	CA, Simmons	Delete L.34:	04/03 02:29 PM
Tab 10	CS/SB 1500 by EN, Simmons; (Similar to CS/CS/H 00767) Right of Entry					
Tab 11	SB 604 by Pizzo; (Identical to H 00763) Registered Contractor Licensing					
Tab 12	CS/SB 1476 by BI, Flores; (Similar to H 01145) Citizens Property Insurance Corporation					
Tab 13	CS/SB 1666 by EN, Flores; (Compare to CS/H 01221) Vessels					
844894	D	S	RCS	CA, Flores	Delete everything after	04/03 05:52 PM
Tab 14	SB 1694 by Flores; (Identical to H 01019) Takings Claims Within Areas of Critical State Concern					
Tab 15	SB 1572 by Albritton; (Compare to CS/H 01169) Displacement of Private Waste Companies					

Tab 16 SB 1400 by Albritton; (Similar to H 01159) Private Property Rights						
694068	D	S	RCS	CA, Flores	Delete everything after	04/03 04:33 PM
422236	AA	S	WD	CA, Farmer	Delete L.75 - 93:	04/02 12:42 PM
137874	AA	S	WD	CA, Farmer	Delete L.75 - 93:	04/03 04:33 PM
492166	AA	S	RCS	CA, Flores	Delete L.75 - 93:	04/03 04:33 PM
426626	AA	S	WD	CA, Flores	Delete L.81 - 82:	04/03 04:33 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Flores, Chair
Senator Farmer, Vice Chair

MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1140 Judiciary / Hutson (Similar CS/CS/H 829)	Attorney Fees and Costs; Defining the term "attorney fees and costs"; providing for award of attorney fees and costs and damages in civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances, etc. JU 03/18/2019 Fav/CS CA 04/02/2019 Fav/CS RC	Fav/CS Yeas 3 Nays 2
2	CS/SB 588 Commerce and Tourism / Hutson (Similar CS/H 603, Compare CS/H 1299)	Preemption of Local Regulations; Prohibiting local government entities from adopting or enforcing local ordinances or regulations relating to single-use plastic straws before a specified date; requiring the Department of Environmental Protection, or an entity designated by the department, to conduct a study evaluating the environmental impact of single-use plastic straws; providing penalties for violations of the moratorium by a local government entity; preempting the regulation of over-the-counter proprietary drugs or cosmetics to the state, etc. CM 03/04/2019 Fav/CS CA 04/02/2019 Not Considered RC	Not Considered
3	SB 696 Hutson (Compare CS/H 267)	Budgets of County Constitutional Officers; Including property appraisers to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners; requiring the tentative budget of a county constitutional officer to be separately identified from the tentative budget of the county as a whole when posted to the county's website, etc. CA 04/02/2019 Not Considered FT AP	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 2, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 908 Banking and Insurance / Hooper (Compare H 647, H 723, CS/CS/H 1393, S 1152, CS/S 1704, S 1732)	Firesafety Systems; Requiring that a uniform fire alarm permit application, along with certain other information, be used and submitted to the local enforcement agency for any project requiring a fire alarm permit; authorizing local authorities having jurisdiction to accept uniform summary inspection reports of certain fire hydrants and fire protection systems by certain means; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; extending the date before which a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system, etc. BI 03/18/2019 Fav/CS CA 04/02/2019 Fav/CS RC	Fav/CS Yeas 4 Nays 1
5	CS/SB 1708 Commerce and Tourism / Rouson	Tourist Development Councils; Conforming provisions to changes made by the act; authorizing certain counties to adopt a resolution that establishes and appoints members of more than one tourist development council upon a certain finding; requiring that such counties organize their tourist development councils in accordance with specified requirements upon the adoption of such resolution, etc. CM 03/18/2019 Fav/CS CA 04/02/2019 Favorable RC	Favorable Yeas 5 Nays 0
6	CS/SB 1758 Environment and Natural Resources / Mayfield (Compare CS/H 141, H 1395, CS/S 216)	Water Quality Improvements; Citing this act as the "Clean Waterways Act"; requiring the Department of Environmental Protection, in coordination with the Department of Health, to develop a report to be submitted to the Legislature by a specified date on the impacts of transferring the onsite sewage program of the Department of Health to the Department of Environmental Protection by a type two transfer; revising the requirements for a basin management action plan for an Outstanding Florida Spring; establishing a wastewater grant program within the Department of Environmental Protection, etc. EN 03/20/2019 Fav/CS CA 04/02/2019 Fav/CS AP	Fav/CS Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 2, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1200 Judiciary / Stargel (Similar CS/CS/H 1247)	Construction Bonds; Requiring a notice of nonpayment to be under oath; deeming contractors to be insureds or beneficiaries in relation to bonds for construction contracts; requiring a lienor to serve a notice of nonpayment under oath to specified entities during a certain period of time, etc. JU 03/25/2019 Fav/CS CA 04/02/2019 Favorable RC	Favorable Yeas 5 Nays 0
8	SB 1508 Simmons (Similar H 1081, Compare CS/H 691, H 1083, S 854, Linked S 1510)	Neighborhood Improvement Districts; Increasing the maximum number of directors allowed for boards of special neighborhood improvement districts; requiring local planning ordinances to specify the number of directors and their term lengths and to provide for staggered terms; creating the Safe Neighborhood Improvement District Revolving Loan Program; authorizing the Department of Legal Affairs to provide loans for specified projects within safe neighborhood improvement districts, etc. CA 04/02/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0
9	SB 1510 Simmons (Similar H 1083, Compare H 1081, Linked S 1508)	Trust Funds/Safe Neighborhood Improvement District Revolving Loan Trust Fund/Department of Legal Affairs; Creating the Safe Neighborhood Improvement District Revolving Loan Trust Fund within the Department of Legal Affairs; providing for future review and termination or re-creation of the trust fund, etc. CA 04/02/2019 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
10	CS/SB 1500 Environment and Natural Resources / Simmons (Similar CS/CS/H 767)	Right of Entry; Releasing right of entry reserved by a local government, water management district, or other agency of the state for specified parcels of property, etc. EN 03/26/2019 Fav/CS CA 04/02/2019 Favorable AP	Favorable Yeas 5 Nays 0
11	SB 604 Pizzo (Identical H 763)	Registered Contractor Licensing; Extending the date by which an applicant must make application for a license to be grandfathered, etc. IT 03/19/2019 Favorable CA 04/02/2019 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 2, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 1476 Banking and Insurance / Flores (Similar H 1145)	Citizens Property Insurance Corporation; Specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties, etc. BI 03/25/2019 Fav/CS CA 04/02/2019 Favorable RC	Favorable Yeas 5 Nays 0
13	CS/SB 1666 Environment and Natural Resources / Flores (Compare CS/H 1221)	Vessels; Requiring all persons, rather than only persons born after a specified date, to have a specified boating safety identification card in their possession before operating certain vessels; directing the Fish and Wildlife Conservation Commission to conduct, contingent upon appropriation, a specified study of the impacts of long-term stored vessels and certain anchored and moored vessels on local communities and the state and to submit a report to the Governor and Legislature within a specified time; authorizing certain counties to create no-discharge zones, etc. EN 03/26/2019 Fav/CS CA 04/02/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0
14	SB 1694 Flores (Identical H 1019)	Takings Claims Within Areas of Critical State Concern; Providing for the apportionment of awards of damages for takings claims within areas of critical state concern, etc. JU 03/25/2019 Favorable CA 04/02/2019 Not Considered AP	Not Considered
15	SB 1572 Albritton (Compare CS/H 1169)	Displacement of Private Waste Companies; Revising the process for a local government to displace a private waste company in a county or municipality; requiring a local government to announce its intent to adopt an ordinance or a resolution for organized collection service through a resolution of intent; providing requirements for the resolution of intent, etc. CA 04/02/2019 Temporarily Postponed EN RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 2, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SB 1400 Albritton (Similar H 1159)	Private Property Rights; Prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; establishing a property owner bill of rights; providing that such bill of rights does not provide a cause of action, etc. CA 04/02/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1140

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Hutson

SUBJECT: Attorney Fees and Costs

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Fav/CS
2.	Peacock	Yeatman	CA	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1140 authorizes the payment of reasonable attorney fees and costs to the prevailing party in an action challenging the adoption or enforcement of a local government ordinance on preemption grounds if a court finds that the subject of the ordinance has been expressly preempted by the State Constitution or state law. However, a local government may avoid liability for attorney fees and costs if the challenged ordinance is repealed or withdrawn within 21 days of either (1) receiving written notice of the claim or (2) the filing of a motion for attorney fees, whichever is earlier.

The bill provides that the payment of attorney fees and costs is supplemental to all other sanctions and remedies. The bill does not apply to ordinances relating to growth management unless an ordinance is preempted by s. 553.79(20), F.S., relating to local government regulation of specified development, construction or improvements on real property associated with a franchise or the sale of liquid fuel or brake fluid and the regulation of signage for retail price of gasoline.

The bill provides for a July 1, 2019, effective date and for retroactive application to cases pending on July 1, 2019.

II. Present Situation:

Attorney Fees and Costs: The “American Rule”

Although England and the United States share the same common law origins, the two nations have taken different positions concerning who pays attorney fees and costs in a lawsuit.¹ Under the “English Rule,” the “loser pays” attorney fees and costs to the prevailing party as part of that party’s overall damages award.² However, under the “American Rule,” each party to a lawsuit is responsible for his or her own attorney fees and costs no matter who wins.³

There are, however, two exceptions to the “American Rule” in Florida. First, the prevailing party may recover attorney fees and costs from the losing party if authorized by statute. Second, the prevailing party may recover attorney fees and costs from the losing party in a contract dispute by prior agreement of the parties to include a “prevailing party provision” in their contract.⁴

Statutory Exceptions to the “American Rule”

Sanctions

When a statutory exception to the “American Rule” is enacted, it may be intended as a sanction or a punitive measure to curtail certain practices. For example, in Florida, section 57.105, F.S. permits a party to be sanctioned for filing a frivolous lawsuit in the form of paying the other party’s attorney’s fees and costs.⁵ Florida courts have noted that the purpose of this statutory exception to the “American Rule” is to “discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney’s fees awards on losing parties who engage in these activities.”⁶

¹ Aaron Bartholomew & Sharon Yamen, *The American Rule: The Genesis and Policy of the Enduring Legacy on Attorney Fee Awards*, 30 UTAH B.J., at 14 (September/October 2017) (discussing the history of the American Rule, the difference from the English Rule, and the rationale for each).

² *Id.* at 16. The English Rule is thought to discourage frivolous lawsuits, discourage driving up litigation costs during discovery, and make a party truly, completely whole. *Id.* at 16-17.

³ *Id.* at 14. The early rationale for the American Rule was to give the poor access to justice. The English Rule was seen effectively denying justice to the poor and because, even if the case was meritorious, the risk of paying the other party’s attorney fees and costs would serve as deterrent to filing suit. *Id.* at 17. However, commentary suggests the American Rule has actually survived because lawyers are no longer under statutory fee regulations and are free to contract for fees with their clients, thus alleviating the need to recover the fees from the other party. *Id.* at 17-18.

⁴ *Id.*; *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004) (quoting *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993) in parenthetical: “This Court has followed the ‘American Rule’ that attorney’s fees may be awarded by a court only when authorized by statute or by agreement of the parties.”).

⁵ Section 57.105(1), F.S., provides that “[u]pon the court’s initiative or motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.”

⁶ *MC Liberty Express, Inc. v. All Points Services, Inc.*, 252 So. 3d 397, 402 (Fla. 3d DCA 2018) (quoting *Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 505 (Fla. 1982)).

Compliance Incentive

Additionally, a statutory exception to the “American Rule” may be intended to act as an incentive to comply with the law. For instance, under Florida’s Public Records Act (PRA), if an agency unlawfully refuses to permit public records to be inspected or copied, the PRA provides that the courts “shall assess and award the reasonable costs of enforcement, including reasonable attorneys’ fees, against the agency responsible.”⁷ As noted by the Second District Court of Appeal, the purpose of the PRA’s attorney fee provision is “to encourage voluntary compliance with Florida’s public records law, which gives effect to the state’s policy ‘that all state, county, and municipal records shall be open for personal inspection by any person.’”⁸

Local Government

In Florida, local government consists of two entities: **counties and municipalities**.

Counties are established by the Florida Constitution as subdivisions of the State.⁹ Additionally, “[c]ounties in Florida are given broad authority to enact ordinances.”¹⁰

The precise scope of the power to enact ordinances and operation of those ordinances depends on whether or not the county operates under a charter. The differences in non-charter and charter county governments are set forth in Article VIII, section 1(f) and (g) of the Florida Constitution:

(f) Non-charter government. Counties not operating under county charters *shall have such power of self-government as is provided by general or special law*. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county *ordinances not inconsistent with general or special law*, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.¹¹

(g) Charter government. Counties operating under county charters *shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors*. The governing body of a county operating under a charter may enact county ordinances *not inconsistent with general law*. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

⁷ Section 119.12, F.S. (requiring pre-suit notice to the agency and determinations by the court).

⁸ *Office of State Attorney for Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759, 763 (Fla. 2d DCA 2007) (quoting s. 119.01(1), F.S.). See also *N.Y. Times Co. v. PHH Mental Health Servs., Inc.*, 616 So. 2d 27, 29 (Fla. 1993) (“If public agencies are required to pay attorney’s fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.”) (cited by *Gonzalez*).

⁹ FLA. CONST. art. VIII, s. 1.

¹⁰ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005) (citing FLA. CONST. art. VIII, ss. 1(f) and (g); s. 125.01(3), F.S.; and *St. Johns County v. N.E. Fla. Builders Ass’n*, 583 So. 2d 635, 642 (Fla. 1991)).

¹¹ See also s. 125.01, F.S.

Municipalities, on the other hand, are created by legislative enactment.¹² Historically, municipalities were “established in separately described areas containing inhabitants whose interests require special local governmental activities not afforded by State and county units.”¹³ Municipalities, likewise, have broad statutory authority to enact ordinances under their home rule powers.¹⁴ As set out in s. 166.021(3), F.S.,

The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- (b) Any subject expressly prohibited by the constitution;
- (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
- (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.¹⁵

Legislative Preemption

“Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the Legislature.”¹⁶ There are two types of preemption: **express** and **implied**.

“**Express preemption** requires a specific statement” by the Legislature; it “must be accomplished by clear language stating that intent.”¹⁷ “[T]he legislature can easily create express preemption by including clear language in a statute.”¹⁸ For example, the Legislature has clearly and expressly preempted the area of state firearms and ammunition regulation as set forth in s. 790.33(1), F.S.:

(1) Preemption.--Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

¹² FLA. CONST. art. VIII, s. 2.

¹³ *City of Miami v. Rosen*, 10 So. 2d 307, 309 (Fla. 1942).

¹⁴ FLA. CONST. art. VIII, s. 2(b); s. 166.021, F.S. See also *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

¹⁵ Section 166.021, F.S. has been held unconstitutional as applied in the case of *City of Miami Beach v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Miami Beach*, 91 So. 3d 237 (Fla. 3d DCA 2012).

¹⁶ *City of Hollywood*, at 1243 (quoting *Phantom of Clearwater, Inc.*, at 1018).

¹⁷ *City of Hollywood*, at 1243 (quoting *Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982)).

¹⁸ *Phantom of Clearwater, Inc.*, at 1019 (citing *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996)).

Implied preemption is “actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁹ “[C]ourts imply preemption only when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”²⁰ “When courts create preemption by implication, the preempted field is usually a narrowly defined field, limited to the specific area where the Legislature has expressed their will to be the sole regulator.”²¹ The Florida Supreme Court recognized that the Legislature in chapter 440, F.S. had implicitly “preempted local regulation on the subject of worker’s compensation,” reasoning that “[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.”²²

Coexisting State Law and Local Ordinance

Under their broad home rule powers, counties and municipalities may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the state.²³ County and municipal ordinances “are inferior to laws of the state and must not conflict with any controlling provision of a statute.”²⁴ Local government cannot, in other words, “forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.”²⁵ “[A]n ordinance penalty may not exceed the penalty imposed by the state”; however, an ordinance may provide a penalty less severe than that imposed by a state statute.”²⁶

Legal Action Challenging Ordinances on Preemption Grounds

A legal action challenging an ordinance on preemption grounds may be brought in a suit for declaratory relief. A suit for declaratory relief is properly brought under the declaratory judgment act to “declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”²⁷ “Even though the legislature has expressed its intent that the declaratory judgment act . . . should be broadly construed,²⁸ there still must exist some justiciable controversy *between adverse parties* that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute’s validity would be advisory only and improperly considered in a declaratory action.”²⁹

¹⁹ *Phantom of Clearwater, Inc.*, at 1019.

²⁰ *Id.* (citations and internal quotations omitted).

²¹ *Id.* (citations and internal quotations omitted).

²² *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla. 1989) (citing *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed*, 471 U.S. 1096 (1985)).

²³ *City of Hollywood*, at 1243 (citing *Wyche v. State*, 619 So. 2d 231, 237–38 (Fla. 1993) (citations and internal quotations omitted)).

²⁴ *City of Hollywood*, at 1246 (citing *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993)).

²⁵ *Id.* at 1247 (citations and internal quotations omitted).

²⁶ *Id.* (citations and internal quotations omitted).

²⁷ Section 86.011, F.S.

²⁸ Section 86.101, F.S.

²⁹ *Atwater v. City of Weston*, 64 So. 3d 701, 704–05 (Fla. 1st DCA 2011) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170–71 (Fla. 1991) (emphasis added)).

For instance, in *City of Hollywood v. Mulligan*, after his arrest for soliciting a prostitute, Mr. Mulligan's vehicle was seized pursuant to an ordinance passed by the City of Hollywood requiring the forfeiture of any vehicle used in connection with the solicitation of a prostitute. Mr. Mulligan filed an action for declaratory relief to declare the ordinance invalid on the grounds that the Legislature had preempted the forfeiture field. The Florida Supreme Court ultimately held that the forfeiture field had not been preempted.³⁰

III. Effect of Proposed Changes:

Section 1 creates s. 57.112, F.S., to authorize the payment of reasonable attorney fees and costs and damages to the prevailing party in a challenge to a local government's adoption or enforcement of a local ordinance on the grounds that the subject of the ordinance is expressly preempted by the State Constitution or by state law.

The bill defines the term "attorney fees and costs" as the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

The bill prohibits an award of attorney fees and costs if the local government withdraws or repeals an ordinance that a court determines was preempted. The withdraw or repeal must occur within 21 days after (1) receiving a written claim that the proposed or adopted ordinance is preempted, or (2) the filing of a motion for attorney fees and costs under the new statutory section, whichever occurs first.

The language of the bill also suggests that permitting an award of attorney fees and costs to the prevailing party is meant to be a sanction, given that the bill's statement that the attorney fees and costs award "is cumulative to all other sanctions or remedies available under law or court rule."

Additionally, the bill provides that unless an ordinance is preempted by s. 553.79(20), F.S.,³¹ the bill does not apply to ordinances "relating to growth management." This appears to refer to the comprehensive plans for land use governed by Chapter 163, Part II, entitled "Growth Policy; County and Municipal Planning; Land Development Regulation."

Section 2 provides that this bill is remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

Section 3 provides that the bill takes effect July 1, 2019.

³⁰ *City of Hollywood*, at 1241.

³¹ Section 553.79(20), F.S., prohibits a political subdivision of the state from adopting or enforcing an ordinance or imposing any building permit or other development order relating to local government regulation of specified development, construction or improvements that impairs corporate branding identity on real property associated with a franchise or the sale of liquid fuel or brake fluid and the regulation of signage for the retail price of gasoline.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would provide private individuals and businesses with a more effective method of holding local governing bodies accountable to operate within their proper authority.

C. Government Sector Impact:

The bill may open local governments to liability to pay attorney fees in cases where preemption of a subject area is unclear and the local government did *not* intentionally flout any express preemption of a subject area by passing a particular ordinance. In other words, a local government may be penalized in a case where they had a good faith belief that they were passing a legally permissible ordinance.

VI. Technical Deficiencies:

To clarify the intent of s. 57.112(6), F.S., the Legislature may wish to state that the bill's provisions do not apply to Chapter 163, Part II, F.S. rather than to "ordinances relating to growth management."

The bill refers to local ordinances that are "preempted by the State Constitution or by state law." Because the Constitution does not preempt local ordinances to the state, the Legislature may

wish to revise the phrase to refer the ordinances that are prohibited by the State Constitution or preempted by state law.

Additionally, it is unclear whether the 21 day period begins after the court issues a decision determining that the local ordinance was preempted or if the 21 day period begins after a written claim is received by a local government.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 57.112 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 Community Affairs on April 2, 2019:

The committee substitute:

- Deletes prejudgment interest and costs as part of the reasonable attorney fees and costs that may be recovered.
- Provides that the recovery of attorney fees and costs does not apply to ordinances relating to growth management unless the ordinance is preempted by s. 533.79(20), F.S.

CS by Judiciary on March 18, 2019:

The committee substitute:

- Removes the waiver of sovereign immunity.
- Changes the attorney fee requirement from a one-sided rule, making only the local government liable for attorney fees and costs if it loses, to a prevailing party rule, meaning either party may be liable to pay attorney fees and costs if it loses.
- Changes the applicability of the attorney fee requirement from all preemption challenges, which includes express or implied preemption, to express preemption only.

- B. Amendments:

None.



310490

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment

Delete lines 27 - 28
and insert:
reasonable attorney fees and costs and damages to the prevailing party.



932614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment

Delete line 40

and insert:

(5) Unless an ordinance is preempted by s. 553.79(20), this section does not apply to ordinances relating to

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-19
Meeting Date

1140
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name David Cullen

Job Title

Address 1674 University Pkwy #296

Phone 941-323-2404

Street
City Sarasota FL Zip 34243

Email cullen@seelocal.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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date 4-2-19

Amendment Barcode (if applicable) 1140
Bill Number (if applicable) HB 1000

Topic ATTORNEYS FEES

Name ALISA YAMANS

Job Title LEGISLATIVE COUNSEL

Address 100 S. MONROE ST

City TALE State FL Zip 32301

Phone 254-1838

Email ALYAMANS@FLSENATE.GOV

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COURTIERS

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)

Meeting Date 4/2/14

Bill Number (if applicable) 58 1140

Topic Attorney Fees

Amendment Barcode (if applicable) _____

Name Rick Templin

Job Title _____

Address 135 S. Monroe

Phone 850 - 224 - 6526

Street Tallahassee State FL Zip 32302

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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Meeting Date

4/2/19

Bill Number (if applicable)

SB 140

Amendment Barcode (if applicable)

Topic Attorney Fees and costs

Name Dominick M. Perotti

Job Title Attorney

Address 1335 Alway 40 West

Street

City

State

Zip

Longwood FL

34449

Phone 352-229-0973

Email

mperotti@dominickperotti.com

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☒ Against

(The Chair will read this information into the record.)

Representing

Law of Longwood

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)

Meeting Date 4/2/19

Bill Number (if applicable) 1140

Topic Attorney Fees

Amendment Barcode (if applicable) _____

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Phone 224-2250

City Tallahassee State FL Zip 32301

Email spadgett@fla.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Restaurant & Lodging Association

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)

Meeting Date 4-2-19

Bill Number (if applicable) 1140

Amendment Barcode (if applicable) _____

Topic Attorney Fees & Costs

Name JAKE FARMER

Job Title Director of Gov Affairs

Address 227 S Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 352-359-6835

Email Jake@fla.org

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

4/2/19

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

Meeting Date

1140

Bill Number (if applicable)

Topic Attorney Fees and Costs

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

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. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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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)

Meeting Date Apr 2, '19

Bill Number (if applicable) 1140

Topic Attorney Fees and Costs

Amendment Barcode (if applicable) _____

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Brancusa St

Phone _____

City TLH State FL Zip 32301

Email _____

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

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4/21/19

Bill Number (if applicable) 1140

Topic Attorney Fees

Amendment Barcode (if applicable)

Name Rebecca D'Hara

Job Title Property General Counsel

Address PO Box 1757

Phone 222 9284

Street

Tallahassee FL 32302

City

State

Zip

Email rdhara@flcourts.gov

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 meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By the Committee on Judiciary; and Senator Hutson

590-03199-19

20191140c1

A bill to be entitled

An act relating to attorney fees and costs; creating s. 57.112, F.S.; defining the term "attorney fees and costs"; providing for award of attorney fees and costs and damages in civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances; providing construction; providing applicability; providing retroactive application; providing an effective date.

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

Section 1. Section 57.112, Florida Statutes, is created to read:

57.112 Attorney fees and costs and damages; preempted local actions.—

(1) As used in this section, the term "attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(2) If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages, including prejudgment interest and costs, to the prevailing party.

(3) Attorney fees and costs may not be awarded pursuant to

590-03199-19

20191140c1

this section if the local government withdraws or repeals an ordinance that the court determined was preempted within 21 days after the earlier of:

(a) The local government's receipt of a written claim that the ordinance, as proposed or adopted, is preempted by the State Constitution or by state law; or

(b) A motion being filed seeking attorney fees and costs pursuant to this section.

(4) The provisions in this section are supplemental to all other sanctions or remedies available under law or court rule.

(5) This section does not apply to ordinances relating to growth management.

Section 2. This act is intended to be remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

Section 3. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 1140
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 588

INTRODUCER: Commerce and Tourism Committee and Senators Hutson and Bradley

SUBJECT: Preemption of Local Regulations

DATE: April 1, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Little	McKay	CM	Fav/CS
2. Peacock	Yeatman	CA	Pre-meeting
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 588:

- Establishes a moratorium on the local regulation and enforcement of single-use plastic straws;
- Requires the DEP, or an entity designated by the DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws and to report the study to the Legislature by July 1, 2024;
- Provides that the moratorium is lifted, effective July 1, 2024, if the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws;
- Provides that it is a violation of local government to attempt to adopt or enforce single-use plastic straw regulations before July 1, 2024, which shall result in a fine to the offending local government entity in the amount of \$25,000; and
- Preempts the regulation of over-the-counter proprietary drugs and cosmetics to the state, notwithstanding any other law or local ordinance to the contrary.

The bill takes effect July 1, 2019.

II. Present Situation:

Single-use Plastic Straws

In recent years, the United States has seen an upsurge of initiatives aimed at increasing the rate at which individuals recycle and reuse materials that may be harmful to the environment. As a result, several states have enacted legislation addressing the use of single-use products, such as Styrofoam, paper bags, and plastic bags.¹

In 2018, California became the first state to pass legislation regulating the use of plastic straws. Under the law, full-service restaurants are prohibited from providing a single-use plastic straw unless the straw is requested by a customer.² Many businesses have also taken measures to reduce the use of plastic straws, including Sea World Entertainment, Royal Caribbean Cruises, Bon Appétit, and Alaska Airlines.³

Plastic Straws in Florida

In response to growing concerns regarding the impact of single-use plastic products on the environment, the Florida Department of Environmental Protection (DEP) initiated a “Skip the Straw” campaign. The campaign encourages individuals, schools, and businesses to reduce pollution caused by plastic in Florida. The DEP also suggests that participants help the cause by picking up litter and participating in beach and river cleanups. Participants of “Skip the Straw” pledge to eliminate their use of plastic straws and other single-use products.⁴

The following Florida cities have passed regulations relating to the use of plastic straws: St. Petersburg,⁵ Town of Fort Myers Beach,⁶ City of Coral Gables,⁷ Village of Pinecrest,⁸ Town of Surfside,⁹ Miami Beach,¹⁰ City of Delray Beach,¹¹ Fort Lauderdale,¹² Deerfield Beach,¹³ and the City of Hallandale Beach.¹⁴

¹ National Conference of State Legislatures (NCSL), *State Plastic and Paper Bag Legislation* (Jan. 17, 2019), available at <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> (last visited March 1, 2019).

² The law became effective January 1, 2019. See Cal. Civ. Code. PUB. RES. s. 42271 (added by Stats, 2018, Ch. 576, S.1 (AB1884)).

³ Darryl Fears, *A Campaign to Eliminate Plastic Straws is Sucking in Thousands of Converts* (June 24, 2017), Washington Post, available at https://www.washingtonpost.com/national/health-science/a-campaign-to-eliminate-plastic-straws-is-sucking-in-thousands-of-converts/2017/06/24/d53f70cc-4c5a-11e7-9669-250d0b15f83b_story.html?utm_term=.bad6e5bf10e7 (last visited March 1, 2019).

⁴ Florida Dep’t of Environmental Protection, *Skip the Straw*, available at <https://floridadep.gov/waste/waste/campaign/skip-straw> (last visited March 1, 2019).

⁵ City of St. Petersburg, Fl., Ord. No. 356-H, s. 1 (2018).

⁶ Town of Fort Myers Beach, Fl., Ord. No. 17-13 (2017).

⁷ City of Coral Gables, Fl., Ord. No. 2019-01, s. 2 (2019).

⁸ Village of Pinecrest, Fl., Ord. No. 2018-14, s. 2 (2018).

⁹ Town of Surfside, Fl., Ord. No. 18-1676, s. 2 (2018).

¹⁰ Miami Beach, Fl., Ord. No. 2018-4208, s. 2 (2018).

¹¹ City of Delray Beach, Fl., Ord. No. 10-19 (2019).

¹² Fort Lauderdale, Fl., Ord. No. 19-0102 (2019).

¹³ Deerfield Beach, Fl., Ord. No. 2018-028, s. 2 (2018) (Editor’s note— Ord. No. 2018/028, s. 2, adopted September 17, 2018, amended the Code by the addition of a new Art. IX, § 34-170; however, said provision has been redesignated as Art. X, § 34-180, at the editor’s discretion, for purposes of maintaining Code format and preventing the duplication of section numbers.)

¹⁴ City of Hallandale Beach, Fl., Ord. No. 18-027 (2018).

Similar Legislation

In 2008, the Legislature enacted s. 403.7033, F.S., to require the DEP to analyze “the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.”¹⁵ Under the law, the DEP was required to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010. The law also prohibited local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts the DEP’s recommendations.¹⁶

In its *Retail Bags Report*, the DEP found that improperly discarded plastic bags, besides being unsightly litter, can harm land and marine life, interfere with landfill operations, clog flood control systems, and breed mosquitos.¹⁷ The DEP provided the Legislature with options, ranging from educational campaigns to complete bans, for discouraging and reducing the use of single-use paper and plastic retail bags and the pros and cons associated with each option.¹⁸ The report concluded that some strategies were more effective than others, with bans, closely followed by user fees and taxes, producing the fastest results.¹⁹ Voluntary efforts were found to be helpful in changing consumer behavior patterns, but their effectiveness was found to be dependent upon the number of retailers participating.²⁰ Finally, the report concluded that public education, by bringing awareness to the damages caused by single-use bags and the costs associated with undoing such damage, is crucial to any approach.²¹

To date, the Legislature has not yet adopted any recommendations contained in the report and the prohibition on any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags remains in effect.

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general²² or special law, and may enact county ordinances not inconsistent with general law.²³ Counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.²⁴ General law

¹⁵ Ch. 2008-227, s. 96, Laws of Fla.

¹⁶ See s. 403.7033, F.S.

¹⁷ DEP, *Florida Department of Environmental Protection, Retail Bags Report*, pg. 1 (Feb. 1, 2010), available at https://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/retailbags/Retail-Bag-Report_01Feb10.pdf (last visited March 1, 2019).

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.

²¹ *Id.*

²² Chapter 125, Part I, F.S.

²³ FLA. CONST. art. VIII, s. 1(f).

²⁴ FLA. CONST. art. VIII, s. 1(g).

authorizes counties “the power to carry on county government”²⁵ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”²⁶

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,²⁷ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.²⁸ Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.²⁹

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.³⁰ Florida law recognizes two types of preemption: express and implied.³¹ Express preemption requires a specific legislative statement; it cannot be implied or inferred.³¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.³³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.³⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for

²⁵ Section 125.01(1), F.S.

²⁶ Section 125.01(1)(w), F.S.

²⁷ Section 166.011, F.S.

²⁸ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited March 1, 2019).

²⁹ Section 166.021(4), F.S.

³⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

³¹ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

³² *Mulligan*, 934 So. 2d at 1243.

³³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³⁴ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

³⁵ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

finding preemption.³⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.³⁷

Recent Litigation

The City of Coral Gables enacted an ordinance on February 9, 2016, banning the sale or use of containers made of polystyrene, also known as Styrofoam, by different entities and in different places within the City. The ordinance set forth exemptions from the ban for certain products or uses of polystyrene and provided code enforcement procedures for issuing tickets and fines for violations and for appealing violations. On March 9, 2016, the Legislature passed House Bill 7007 which, among other provisions, created s. 500.90, F.S.³⁸ The new statutory section preempted to the Department of Agriculture and Consumer Services the regulation of the use or sale of polystyrene products by entities regulated under ch. 500. Chapter 500, F.S., is related to the regulation of food products. Section 500.90, F.S., provided exceptions to the preemption including local ordinances enacted before January 1, 2016. House Bill 7007 became effective July 1, 2016. On July 18, 2016, the City was sued by the Florida Retail Federation, Inc. and Super Progreso Inc., who alleged that the City's ordinance was preempted by state statute.³⁹ The plaintiffs sought a declaratory judgment to that effect and injunctive relief to prevent the enforcement of the ordinance. The State of Florida was granted permission to intervene by the court and filed a response in opposition to the City's motion for summary judgment.⁴⁰

In an order dated February 27, 2017, the court granted the City's Motion for Summary Judgment, holding that the statutory sections relied on by the plaintiffs in asserting preemption lack the necessary standards and guidelines for implementation and are unconstitutionally vague. Final judgment in the case was rendered on March 8, 2017. The court ruled in favor of the City of Coral Gables and held that the statutes preempting the regulation by local governments of polystyrene,⁴¹ plastic bags,⁴² and the packaging of products manufactured or sold in the state⁴³ are unconstitutional and that the City's ordinance is valid and enforceable.⁴⁴

Thereafter, the Florida Retail Federation, Inc. and Super Progreso Inc. (Appellants) filed an appeal of the Eleventh Judicial Circuit's order with the Florida Third District Court of Appeal (3rd DCA). On December 13, 2017, oral arguments were held before the 3rd DCA. A decision has not yet been rendered by the 3rd DCA. On March 20, 2019, the Appellants filed a Notice of Pendency and Request for Ruling with the court.

³⁶ *Id.*

³⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

³⁸ Ch. 2016-61, s. 7, LAWS OF FLA.

³⁹ The plaintiffs asserted that ss. 500.90, 403.708(9), and 403.7033, F.S., preempted the ordinance.

⁴⁰ *Florida Retail Federation, Inc. and Super Progreso Inc. v. The City of Coral Gables*, Case No. 2016-018370-CA-01 (Fla. 11th Jud. Cir. 2017).

⁴¹ Section 500.90, F.S.

⁴² Section 403.7033, F.S.

⁴³ Section 403.708(9), F.S.

⁴⁴ See *supra* note 40.

On January 8, 2019, the City of Coral Gables City Commission voted to ban plastic straws and stirrers from city facilities, parks and permitted events. The ban also applies to city vendors and contractors.⁴⁵

The Florida Drug and Cosmetic Act

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S.⁴⁶ The Act's purpose is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics.⁴⁷ The Department of Business and Professional Regulation is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.⁴⁸ Administration of the Act must conform to the Federal Food, Drug, and Cosmetic Act⁴⁹ and the applicable portions of the Federal Trade Commission Act,⁵⁰ which prohibit the false advertising of drugs, devices, and cosmetics.⁵¹

III. Effect of Proposed Changes:

Section 1 establishes a moratorium on the local regulation and enforcement of plastic straws until July 1, 2024. Under the bill, a county, municipality, or another local entity of local government is prohibited from adopting or enforcing an ordinance or other local regulation relating to single-use plastic straws before July 1, 2024.

The bill requires the DEP, or an entity designated by the DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws. An entity designated by the DEP to conduct the study is required to be competent, knowledgeable, and unbiased regarding environmental impact studies. The environmental impact study must:

- Focus on the scientific data regarding the environmental impact of single-use plastic straws and the potential impact on the environment of this state if a reduction in the number of, or a prohibition on the use of, single-use plastic straws; and
- Consider the usefulness and environmental impact of potential alternatives to single-use plastic straws on the quality of life of persons with disabilities who may rely on single-use plastic straws for feeding and hydration.

The bill also provides that the environmental impact study may also consider single-use plastic straw regulations adopted in other jurisdictions in the United States and the actual effectiveness of such regulations in those jurisdictions in terms of environmental impact.

⁴⁵ File #18-8138, City of Coral Gables City Commission Meeting, *available at* <https://coralgables.legistar.com/LegislationDetail.aspx?ID=3823521&GUID=2F753430-AD58-49FB-B9DE-EE6780BFEDEB&Options=ID|Text|&Search=> (last visited March 1, 2019).

⁴⁶ Section 499.001, F.S., provides that ss. 499.001-499.94 is the Florida Drug and Cosmetic Act.

⁴⁷ Section 499.002(1)(a), F.S.

⁴⁸ Section 499.002(2), F.S.

⁴⁹ 21 U.S.C. ss. 301 *et seq.*

⁵⁰ See 15 U.S.C. §§ 41-58, as amended.

⁵¹ Section 499.002(1)(b), F.S.

The DEP is required to report the results of the environmental impact study to the Legislature by January 1, 2024. If, upon evaluating the results of the study, the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws, the moratorium on local regulation and enforcement of plastic straws ends on July 1, 2024.

Under the bill, an attempt by a county, municipality, or another entity of local government to adopt or enforce single-use plastic straw regulations before July 1, 2024 constitutes a violation, which shall result in a fine to the offending local governmental entity in the amount of \$25,000. Additionally, the offending local government is responsible for the attorney fees and costs of any party filing and prevailing in a civil action to enforce the terms of the moratorium.

Section 2 amends s. 499.002, F.S., to provide that, notwithstanding any other law or local ordinance to the contrary, the regulation of over-the-counter proprietary drugs and cosmetics is preempted to the state to be uniformly administered.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEP may incur costs associated with conducting the study required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Several local regulations apply to the distribution of both single-use plastic straws and plastic stirrers. It is unclear whether the enforcement or adoption of local regulations relating to plastic stirrers will be subject to the fine imposed by the bill. Additionally, the bill does not specify who will impose the fine against an offending local government entity.

VIII. Statutes Affected:

This bill creates section 403.7034 of the Florida Statutes. The bill amends section 499.002 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 Commerce and Tourism on March 4, 2019:**

The committee substitute:

- Establishes a moratorium on the local regulation and enforcement of single-use plastic straws;
- Requires the DEP, or an entity designated by the DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws and to report the results of the environmental impact study to the Legislature by January 1, 2024;
- Provides that the moratorium is lifted, effective July 1, 2024, if the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws;
- Provides that it is a violation of local government that attempts to adopt or enforce single-use plastic straw regulations before July 1, 2024, which shall result in a fine to the offending local government entity in the amount of \$25,000; and
- Preempts the regulation of over-the-counter proprietary drugs and cosmetics to the state, notwithstanding any other law or local ordinance to the contrary.

B. Amendments:

None.



225460

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 499.072, Florida Statutes, is created to
read:

499.072 Local regulation of over-the-counter proprietary
drugs and cosmetics; moratorium; penalties.—

(1) Before July 1, 2021, a county, a municipality, or
another local governmental entity may not adopt or enforce an



225460

ordinance or other local regulation relating to over-the-counter
proprietary drugs and cosmetics.

(2) An attempt by a county, a municipality, or another
local governmental entity to adopt or enforce over-the-counter
proprietary drugs and cosmetics regulations before July 1, 2021,
is a violation of this chapter and shall result in a fine of
\$25,000 imposed on the offending county, municipality, or other
local governmental entity. Further, the offending entity is
responsible for the attorney fees and costs of any party filing
and prevailing in a civil action to enforce the terms of the
moratorium.

Section 2. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to preemption of local regulations;
creating s. 499.072, F.S.; prohibiting certain
governmental entities from adopting or enforcing local
ordinances or regulations relating to over-the-counter
proprietary drugs and cosmetics before a specified
date; providing penalties for violations of the
moratorium by a local governmental entity; providing
an effective date.

By the Committee on Commerce and Tourism; and Senators Hutson
and Bradley

577-02659-19

2019588c1

1 A bill to be entitled
2 An act relating to preemption of local regulations;
3 creating s. 403.7034, F.S.; prohibiting local
4 government entities from adopting or enforcing local
5 ordinances or regulations relating to single-use
6 plastic straws before a specified date; requiring the
7 Department of Environmental Protection, or an entity
8 designated by the department, to conduct a study
9 evaluating the environmental impact of single-use
10 plastic straws; providing qualifications for the
11 designated entity; specifying requirements for the
12 environmental impact study; requiring the department
13 to submit a report on the environmental impact study
14 results to the Legislature by a specified date;
15 providing that, under certain circumstances, the
16 moratorium on local regulation is lifted by a
17 specified date; providing penalties for violations of
18 the moratorium by a local government entity; amending
19 s. 499.002, F.S.; preempting the regulation of over-
20 the-counter proprietary drugs or cosmetics to the
21 state; providing an effective date.

23 WHEREAS, single-use plastic straws comprise less than 1
24 percent of waste and litter, and

25 WHEREAS, alternatives to single-use plastic straws may have
26 equivalent environmental drawbacks or have reduced utility in
27 certain beverage types, and

28 WHEREAS, reducing the availability of single-use plastic
29 straws may negatively impact persons with disabilities who

577-02659-19

2019588c1

30 require single-use plastic straws for feeding and hydration, and
31 WHEREAS, businesses should be free to decide the best
32 manner in which to serve their customers, free from unnecessary
33 governmental intrusion or regulation, and

34 WHEREAS, the prudent deliberation regarding materials usage
35 and the development of policy based on sound research and
36 science will result in better long-term solutions for this
37 state, NOW, THEREFORE,

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 403.7034, Florida Statutes, is created
42 to read:

43 403.7034 Local regulation of single-use plastic straws;
44 moratorium; environmental impact study; penalties.—

45 (1) Before July 1, 2024, a county, a municipality, or
46 another entity of local government may not adopt or enforce an
47 ordinance or other local regulation relating to single-use
48 plastic straws.

49 (2) In the interim, the department, or an entity designated
50 by the department, shall conduct a study to evaluate the
51 environmental impact of single-use plastic straws. A designated
52 entity must be competent, knowledgeable, and unbiased regarding
53 environmental impact studies.

54 (3) The environmental impact study must focus on scientific
55 data regarding the environmental impact of single-use plastic
56 straws and the potential impact on the environment of this state
57 of a reduction in the number of, or a prohibition on the use of,
58 single-use plastic straws. The study may consider single-use

577-02659-19

2019588c1

59 plastic straw regulations adopted in other jurisdictions in the
 60 United States and the actual effectiveness of such regulations
 61 in those jurisdictions in terms of environmental impact. The
 62 study must also consider the usefulness and environmental impact
 63 of potential alternatives to single-use plastic straws and the
 64 potential impact of reducing or eliminating single-use plastic
 65 straws on the quality of life of persons with disabilities who
 66 may rely on single-use plastic straws for feeding and hydration.

67 (4) The department shall report the results of the
 68 environmental impact study to the Legislature by January 1,
 69 2024. If, upon evaluating the results of the study, the
 70 Legislature does not enact a general law specifying a statewide
 71 policy regarding single-use plastic straws or a law preempting
 72 local regulation of single-use plastic straws, the moratorium on
 73 local regulation and enforcement under this section is lifted,
 74 effective July 1, 2024.

75 (5) An attempt by a county, a municipality, or another
 76 entity of local government to adopt or enforce single-use
 77 plastic straw regulations before July 1, 2024, is a violation of
 78 this chapter and shall result in a fine to the offending local
 79 government entity in the amount of \$25,000. Further, the
 80 offending local government entity is responsible for the
 81 attorney fees and costs of any party filing and prevailing in a
 82 civil action to enforce the terms of the moratorium.

83 Section 2. Subsection (7) is added to section 499.002,
 84 Florida Statutes, to read:

85 499.002 Purpose, administration, and enforcement of and
 86 exemption from this part.—

87 (7) Notwithstanding any other law or local ordinance to the

577-02659-19

2019588c1

88 contrary, the regulation of over-the-counter proprietary drugs
 89 and cosmetics is preempted to the state to be uniformly
 90 administered.

91 Section 3. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 696

INTRODUCER: Senator Hutson

SUBJECT: Budgets of County Constitutional Officers

DATE: March 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 696 adds property appraisers to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners, provides criteria for these officers to submit their tentative and final budgets, and requires the tentative budgets to be separately identified from the tentative budget of the county as a whole when posted to the county's website.

II. Present Situation:

Constitutional County Officers

Article VIII, Section 1(d) of the Florida Constitution provides there shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. These officers have duties prescribed in general law.¹

County Budget Systems and Information

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year. The budget must show for each fund, as required by law and sound financial practices, budgeted revenues and

¹ See ch. 30, F.S., (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S., (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S., (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S., (setting forth certain duties of the supervisor of elections as a constitutional officer); and ch. 28, F.S., (setting forth certain duties of the clerk of the circuit court as a constitutional officer).

expenditures by organizational unit.² The budget is approved by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.³ Notwithstanding other provisions of law, the budgets of all county officers must be in sufficient detail and contain such information as the board of county commissioners may require in furtherance of their powers and responsibilities.⁴

Each board of county commissioners may designate a county budget officer to carry out the duties prescribed by statute as to county budgets.⁵ If such board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget officer.⁶ County fee officers are defined in Florida Statutes as those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though their budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.⁷ County fee officers are also subject to reporting requirements.⁸ For example, the county constitutional officers of sheriff, clerk of the circuit court, property appraiser, tax collector, and supervisor of elections have budget reporting requirements of their own in addition to the budget reporting requirements of the county.⁹

Preparation and Adoption of County Budgets

On or before June 1 of each year, the sheriff, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections each must submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.¹⁰ Upon receipt of the tentative budgets and any revisions, the board prepares a summary of the adopted tentative budgets.¹¹ Public hearings are held to explain tentative and final budgets and to entertain community requests and complaints prior to budget adoption.¹² The tentative budget must be posted on the county's official website at least two days before a public hearing. The final budget must be posted on the website within 30 days after adoption. The tentative budgets, adopted tentative budgets, and final budgets are filed in the office of the county auditor as a public record.

² Section 129.01(1), F.S. The level of detail for the budget must meet level of detail requirements for annual financial reports under s. 218.32, F.S.

³ Section 129.01(2), F.S.

⁴ Section 129.021, F.S. See ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b), F.S. for more on these county powers and responsibilities.

⁵ Section 129.025, F.S.

⁶ *Id.*

⁷ Section 218.31(8), F.S.

⁸ See s. 218.35, F.S.

⁹ See ss. 30.49, F.S., (sheriffs' budgets), 218.35(2), F.S., (clerks of the court reporting requirements), 195.087, F.S., (property appraisers and tax collectors budget reporting requirements), 129.201, F.S., (supervisor of elections budgets).

¹⁰ Section 129.03(2), F.S. The county elected property appraiser is not included in this list of office holders required to submit budget information to the board of county commissioners.

¹¹ Section 129.03(3)(b), F.S.

¹² Section 129.03(3)(c), F.S., also outlines public hearing practices and subsequent budget website posting and public record requirements.

Sheriff Budget Process and Requirements

Section 30.49, F.S., requires each sheriff to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail, excluding the cost of construction, repair, or capital improvement of county buildings occupied by the sheriff's office during the fiscal year.¹³ The sheriff must itemize expenditures in accordance with the uniform chart of accounts prescribed by the Department of Financial Services (DFS), as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.¹⁴

The board of county commissioners may amend, modify, increase, or reduce any or all items of expenditure in a sheriff's proposed budget at the hearings held pursuant to s. 200.065, F.S., to fix ad valorem tax millage rates. The sheriff may file an appeal of such board action by petition to the Administration Commission (the Governor and Cabinet).¹⁵ The sheriff's budget as approved, amended, or modified by the Administration Commission is final.¹⁶

Clerk of the Circuit Court Budget Process and Requirements

Section 218.35(2) F.S., provides that the clerk of the circuit court, functioning in his or her capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, shall prepare his or her budget in two parts. The first of these is the budget for funds necessary to perform court-related functions specified by s. 28.36, F.S.

On or before June 1, a proposed budget for these court-related functions must be prepared, summarized, and submitted by the clerk in each county to the Florida Clerks of Court Operations Corporation (Corporation), a public corporation charged with approving the proposed budgets of all clerks of the court in the state.¹⁷ The proposed budget must provide detailed information on the anticipated revenues available and expenditures necessary for the performance of the court-related functions.¹⁸ The Corporation ensures that the total combined budgets of the clerks of the court do not exceed the total estimated revenues available for court-related expenditures as determined by the most recent Revenue Estimating Conference.¹⁹ The Corporation may amend an individual clerk of the court budget to ensure compliance with the combined budget requirements.²⁰

¹³ Section 30.49(2)(a), F.S.

¹⁴ Section 30.49(2)(c), F.S.

¹⁵ Section 30.48(4)(a), F.S.

¹⁶ Section 30.48(5), F.S.

¹⁷ See ss. 28.36(2) and 28.35, F.S. The Corporation is considered a political subdivision of the state and is not subject to ch. 120, F.S. All clerks of the circuit court are members of the Corporation and hold their positions and authority in an ex officio capacity.

¹⁸ Section 28.36(2)(a), F.S.

¹⁹ Section 28.35(2)(f), F.S.

²⁰ *Id.* Before modifying a budget, the Corporation must consider performance measures, workload performance standards, workload measures, and expense data.

The second part of the clerk of circuit court budget process relates to the requirements as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.²¹ This budget is annually prepared and submitted to the board of county commissioners pursuant to s. 129.03(2), F.S., for each fiscal year.²² Expenditures must be itemized in accordance with the uniform chart of accounts prescribed by the DFS as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.²³ The final approved budget of the clerk of the circuit court must be posted on the county's official website within 30 days after adoption and may be included in the county's budget.²⁴

Tax Collector Budget Process and Requirements

Section 195.087, F.S., requires tax collectors to submit their respective budgets to the Department of Revenue (DOR). On or before August 1 of each year, each tax collector simultaneously submits a budget for the operation of the office for the ensuing fiscal year to the DOR and the board of county commissioners.²⁵ Upon review, the DOR either approves the budget and certifies it back to the tax collector or, if it finds the budget inadequate or excessive, returns the budget to the tax collector for revisions and resubmission.²⁶ After the final approval of the budget by the DOR, there can be no reduction or increase by any officer, board, or commission without the approval of the department.²⁷ These DOR reporting provisions in s. 195.087 F.S., do not apply to a county where the office of the tax collector has been abolished and office duties have been reassigned or in a charter county where the charter specifically provides a different method for the submission of the tax collectors budget.²⁸ Section 195.087(6), F.S., provides website posting requirements for a tax collector's final approved budget.

Supervisor of Elections Budget Process and Requirements

Pursuant to ss. 129.01 and 129.03(2), F.S., each supervisor of elections prepares and submits to the board of county commissioners a proposed budget for carrying out the powers, duties, and operations of the office for the next fiscal year.²⁹ The fiscal year of the supervisor of elections commences on October 1 of each year and ends on September 30 of the following year.³⁰ Like sheriffs and clerks of the circuit court, supervisors of elections must itemize expenditures in accordance with the uniform chart of accounts prescribed by the DFS as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.³¹ Similar to sheriffs, the board of county commissioners may amend, modify, increase, or reduce any or all items of expenditure in a supervisor of elections' proposed budget at the hearings held pursuant

²¹ Section 218.35(2) F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Section 195.087(2) F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 129.201(1), F.S.

³⁰ *Id.*

³¹ Section 129.201(2), F.S.

to s. 200.065, F.S., to fix ad valorem tax millage rates.³² Unlike sheriffs, supervisors of elections do not have the ability to appeal board budget changes to the Administration Commission.

Section 129.202, F.S., specifies certain budget requisition procedures a supervisor of elections must follow to access the office's budget funds from the board of county commissioners. These procedures do not impede a supervisor's independence concerning the purchase of supplies and equipment; the selection of personnel; and the hiring, firing, and setting of salaries of such personnel.³³

Property Appraiser Budget Process and Requirements

Section 195.087(1) F.S., outlines the budget process for property appraisers in the state. On or before June 1 of each year, property appraisers simultaneously submit a budget for the operation of their offices for the ensuing fiscal year to the DOR and the board of county commissioners.³⁴ The DOR may amend or change the budget requests as it deems necessary but must notify the property appraiser and board of any such changes by July 15.³⁵ The appraiser and board have the opportunity to respond to such notification with additional budget information or testimony.³⁶ On or before August 15, the DOR makes any final budget amendments or changes after which the budget is deemed final and is funded by the county commission.³⁷

The property appraiser or presiding officer of the county commission may appeal the DOR's final action to the Administration Commission no later than 15 days after the hearings held to fix ad valorem tax millage rates.³⁸ The filing of an appeal does not relieve the county commission of its obligation to fund the department-approved final budget during the pendency of the appeal.³⁹ A budget approved by the DOR, and as amended by the Administration Commission, becomes the operating budget of the property appraiser for the ensuing fiscal year beginning October 1.⁴⁰ Section 195.087(6), F.S., provides website posting requirements for a property appraiser's final approved budget.

State Local Government Financial Reporting

There are numerous provisions in Florida Statutes related to local government financial reporting many of which relate to counties and may therefore shape the budgeting processes of county constitutional officers. For example:

- Section 218.32(1), F.S., requires local governmental entities to submit to the DFS an annual financial report (AFR) and, if the local governmental entities meet the audit threshold specified, a copy of their audit report. A county AFR must be a single document that covers each county agency.

³² Section 129.201(4), F.S.

³³ Section 129.202(2), F.S.

³⁴ Section 195.087(1)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See ss. 195.087(1)(b) and 200.065, F.S.

³⁹ Section 195.087(1)(b), F.S.

⁴⁰ *Id.* This approved budget may subsequently be amended under the same procedure.

- Section 218.32(2), F.S., requires the DFS to annually file, by December 1, a verified report with certain statutorily specified entities showing the total revenues, expenditures, and outstanding long-term debt of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation entity that is required to submit an AFR.
- Section 218.39, F.S., requires an annual financial audit of accounts and records be completed within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts.

III. Effect of Proposed Changes:

Section 1 amends s.129.021, F.S., to add the property appraiser to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners. The bill provides that each officer's tentative and final budget must be detailed and must provide a separate line item for proposed expenditures for each program, division, or unit within the office, and must include an identification of existing and proposed reserves.

The tentative budget must be posted on the county's official website at least two days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officers' budgets.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the bill passes, county constitutional officers will be required to provide greater detail and itemization of expense items in their proposed budgets. Given that these officers already must provide detailed information for other statutorily required financial reports, the additional administrative costs to comply with the bill will likely be minimal.

VI. Technical Deficiencies:

The sponsor may want to clarify which public hearing is referred to on lines 32-33 of the bill.

VII. Related Issues:

The bill requires the property appraiser to file a copy of the proposed budget with county commission under s. 129.03(2), F.S., a step that is redundant to the similar requirement in s. 195.087(1), F.S. As the budgets submitted under s. 129.03(2), F.S., are reviewed and approved by the county commission, the bill may create an uncertainty as to the final authority for reviewing and approving the tentative budgets of the property appraisers.

VIII. Statutes Affected:

This bill substantially amends section 129.03 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.



169744

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 129.021, Florida Statutes, is amended to
read:

129.021 County officer budget information.—

(1) Notwithstanding any other provision ~~provisions~~ of law,
the budgets of all county officers, as submitted to the board of
county commissioners, must be in sufficient detail and contain



169744

such information as the board of county commissioners may require in furtherance of their powers and responsibilities provided in ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b).

(2) The tentative and final budgets of each constitutional officer must be detailed and must provide:

(a) A separate line item for proposed expenditures for each program, division, or unit within the office.

(b) An identification of existing and proposed reserves.

(c) A separate narrative explaining:

1. The budget priorities of the constitutional officer.

2. Each budget line item that is unchanged from the budget for the prior fiscal year.

3. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(3) The tentative budget must be posted on the county's official website at least 2 days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officers' budgets.

Section 2. Subsection (7) is added to section 195.087, Florida Statutes, to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(7) (a) Notwithstanding any other provision of law, the tentative and final budgets of each constitutional officer must be detailed and must provide:

1. A separate line item for proposed expenditures for each



169744

program, division, or unit within the office.

2. An identification of existing and proposed reserves.

3. A separate narrative explaining:

a. The budget priorities of the constitutional officer.

b. Each budget line item that is unchanged from the budget for the prior fiscal year.

c. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(b) The tentative budget must be posted on the constitutional officer's official website at the same time the tentative budget is submitted to the Department of Revenue. The final budget must be posted on the constitutional officer's website and remain posted for the fiscal year of that budget.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the budgets of county constitutional officers; amending s. 129.021, F.S.; providing criteria for submission of tentative and final budgets by county constitutional officers; requiring the tentative budget of a county constitutional officer to be posted on the county's website; amending s. 195.087, F.S.; providing criteria for submission of tentative and final budgets by the



169744

69 property appraiser and tax collector; requiring the
70 tentative and final budgets to be posted on the
71 website of the property appraiser or tax collector;
72 providing an effective date.



192866

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Hutson) recommended the following:

Senate Substitute for Amendment (169744) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 129.021, Florida Statutes, is amended to read:

129.021 County officer budget information.—

(1) Notwithstanding any other provision ~~provisions~~ of law, the budgets of all county officers, as submitted to the board of



192866

county commissioners, must be in sufficient detail and contain such information as the board of county commissioners may require in furtherance of their powers and responsibilities provided in ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b).

(2)(a) The tentative and final budgets of each constitutional officer must be posted on the county's official website and must provide a separate narrative explaining the budget priorities of the constitutional officer. This may be accomplished by posting to the county's official website a link to the constitutional officer's website.

(b) The tentative budget for each constitutional officer must be posted on the county's official website at least 2 days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officer's budget.

Section 2. Present subsection (6) of section 195.087, Florida Statutes, is redesignated as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(6)(a) Notwithstanding any other provision of law, the tentative and final budgets of each property appraiser and tax collector must be detailed and must provide:

1. A separate line item for proposed expenditures for each program, division, or unit within the office.

2. Existing and proposed reserves.

3. A separate narrative explaining:

a. The budget priorities of the property appraiser or tax



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collector.

b. Each budget line item that is unchanged from the budget for the prior fiscal year.

c. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(b) The tentative budget must be posted on each property appraiser's and tax collector's official website at the same time the tentative budget is submitted to the Department of Revenue.

(7)(6) Each property appraiser and tax collector must post their final approved budget on their official website within 30 days after adoption and the budget must remain posted for the fiscal year covered by the budget. Each county's official website must have a link to the websites of the property appraiser or tax collector where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website and the budget must remain posted for the fiscal year covered by the budget.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the budgets of county
constitutional officers; amending s. 129.021, F.S.;



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69 requiring the tentative and final budgets of a county
70 constitutional officer to be posted on the county's
71 website, subject to certain requirements; amending s.
72 195.087, F.S.; providing criteria for submission of
73 tentative and final budgets by the property appraiser
74 and tax collector; requiring the tentative and final
75 budgets to be posted on the website of the property
76 appraiser or tax collector if such a website exists,
77 subject to certain requirements; providing an
78 effective date.

By Senator Hutson

7-01862-19

2019696__

1 A bill to be entitled
 2 An act relating to the budgets of county
 3 constitutional officers; amending s. 129.03, F.S.;
 4 including property appraisers to the list of county
 5 constitutional officers who must submit a tentative
 6 budget to the board of county commissioners; providing
 7 criteria for submission of tentative and final budgets
 8 by county constitutional officers; requiring the
 9 tentative budget of a county constitutional officer to
 10 be separately identified from the tentative budget of
 11 the county as a whole when posted to the county's
 12 website; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Subsection (2) of section 129.03, Florida
 17 Statutes, is amended to read:
 18 129.03 Preparation and adoption of budget.—
 19 (2) On or before June 1 of each year, the sheriff, the
 20 property appraiser, the clerk of the circuit court and county
 21 comptroller, the tax collector subject to a resolution entered
 22 into pursuant to s. 145.022(1), and the supervisor of elections
 23 shall each submit to the board of county commissioners a
 24 tentative budget for their respective offices for the ensuing
 25 fiscal year. However, the board of county commissioners may, by
 26 resolution, require the tentative budgets to be submitted by May
 27 1 of each year. Each officer's tentative and final budget must
 28 be detailed, and must provide a separate line item for proposed
 29 expenditures for each program, division, or unit within the

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-01862-19

2019696__

30 office, and must include an identification of existing and
 31 proposed reserves. The tentative budget must be posted on the
 32 county's official website at least 2 days before the public
 33 hearing and must be identified separately from the tentative
 34 budget of the county as a whole to clearly demarcate the
 35 constitutional officers' budgets.
 36 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 908

INTRODUCER: Community Affairs Committee; Banking and Insurance Committee; and Senator Hooper

SUBJECT: Firesafety Systems

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 908 makes various changes as it relates to fire safety and residential condominiums.

The bill extends the deadlines for the following actions necessary for existing high-rise residential condominiums to comply with the Florida Fire Prevention Code requirements for fire sprinkler and engineered life safety systems:

- A final fire sprinkler permit application and supporting documents must be submitted to the authority having jurisdiction by July 1, 2020;
- All necessary permits must be obtained by July 1, 2021; and
- Final inspection must be passed by December 31, 2022.

Residential condominium associations that fail to timely comply are subject to a daily fine of \$500. The bill removes the option for a condominium associations to vote to opt out of fire safety requirements.

The bill requires fire protection system reports be submitted pursuant to a statewide set of uniform procedures and gives the Division of State Fire Marshal rulemaking authority to establish those procedures.

The bill creates a uniform permit application for the installation of fire alarm systems and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

II. Present Situation:

The Department of Business and Professional Regulation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.¹

State Fire Marshal

Florida’s fire prevention and control law, ch. 633, F.S., designates the state’s Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.²

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

¹ Sections 718.103(11) and 718.104(2), F.S.

² Section 633.104, F.S.

The State Fire Marshal adopts a new edition of the Fire Code every 3 years. The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. When adopting the Fire Code, the State Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code 1;
- Life Safety Code 101; and
- Guide on Alternative Approaches to Life Safety 101A.³

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state. The State Fire Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.⁴

Fire Safety Enforcement by Local Governments

Current law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.⁵

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal. Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.⁶

Section 633.208(5), F.S., states, "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

³ Section 633.202, F.S.; Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, available at: <http://www.nfpa.org/about-nfpa> (last visited on March 28, 2019).

⁴ Sections 633.104(6) and 633.202, F.S.

⁵ Sections 633.108, 633.208, & 633.214(4), F.S.

⁶ Sections 633.118 and 633.216(1), F.S.

Fire Sprinklers and Engineered Life Safety Systems

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.⁷ All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.⁸

The Fire Code allows a building to have an Engineered Lifesafety System (ELSS) as an alternative to a sprinkler system. The Fire Code defines an ELSS as a system that consists of a combination of:

- Partial automatic sprinkler protection;
- Smoke detection alarms;
- Smoke control; and
- Compartmentation or other approved systems.⁹

The Fire Code also does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.¹⁰

For condominium and cooperative associations that complete retrofitting a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance of the units with the Fire Code.

Licensed Fire Protection System Contractor Reports

Currently, licensed fire protection system contractors are mandated to conduct inspections of fire protection systems pursuant to the Fire Code. Section 633.312, F.S., mandates that the inspecting contractor provide the building owner and the local authority having jurisdiction a copy of the inspection report. There are no limitations on inspection report format or uniform submission requirements. Some local jurisdictions have contracted with third-party software vendors and require the submission of inspection reports to their jurisdiction to be done via these systems.

Building Permits for Fire Alarm Installation

Currently, in most jurisdictions a contractor licensed to install fire alarm systems must submit a permit application before beginning work or repairs. There is no uniform application form or process used by the various jurisdictions. As a result different information may be required by local permitting authorities having jurisdiction.

⁷ Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

⁸ Section 553.895(2), F.S.

⁹ 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

¹⁰ 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

Section 553.792, F.S., contains the statutory process for submitting a building permit application for an alarm permit that is not a low-voltage system.¹¹ Under the statute, the local government must advise the applicant what information, if any, is needed to deem the application properly completed; if the local government does not provide written notice that the applicant has not submitted the properly completed application, the application is deemed complete and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required to determine the sufficiency of the application. The applicant must submit the additional information or request the local government act without such information. The local government must approve, approve with conditions, or deny the application within 120 days of receiving a completed application.

An alternative process is provided under s. 553.793, F.S., for low-voltage alarm system permitting. A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system that meets statutory requirements. Instead, the contractor must submit to the local enforcement agency a Uniform Notice of a Low-Voltage Alarm System Project within 14 days after completing the project. The statute provides a standardized uniform notice.

History and Current Law of Retrofitting

In 2000, the State Fire Marshal adopted the national fire and life safety standards set forth by the NFPA into the Fire Code. This required existing multi-family buildings 75 feet or taller including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominium and cooperative associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- Associations could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building.
 - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.
 - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.¹²

In 2006, Governor Bush vetoed House Bill 391 of the 2006 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025.

¹¹ Section 553.793(1)(b), F.S., defines a “low-voltage alarm system project” as a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. [489.505](#), F.S., that is hardwired and operating at low voltage.

¹² Sections 718.112(2)(l) and 719.1055(5) (2003), F.S.

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist, also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.¹³

In October 2009, DBPR completed their report. DBPR's report estimated that retrofitting a condominium with sprinklers would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.¹⁴ However, the cost to retrofit a building can range from \$5,000 per unit to in excess of \$20,000 per unit.¹⁵ According to DBPR, they received 19 certificates from associations stating they completed retrofitting since 2004. Five of those certificates included the cost to complete retrofitting, which ranged from \$908 per unit to \$3,291 per unit with an average of \$2,196 per unit.

DBPR's report also stated an association could expect to receive a 5 percent discount on the "all other perils" portion of their property and casualty insurance policy. DBPR stated that "many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses."¹⁶

In 2010, the Legislature amended the law regarding retrofitting by:

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.¹⁷

In 2017, the Governor vetoed House Bill 653 of the 2017 legislative session, which included similar language to this bill, including the following:

- Provided that in addition to being able to forego retrofitting a building with a fire sprinkler system, associations may also vote to forego retrofitting a building with an ELSS.
- Provided that a vote to forego retrofitting required a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Extended the time that local governments may not require associations to retrofit.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting.

¹³ Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec'y of State (June 1, 2009), *available at*: http://www.butler.legal/files/2009_sb714.pdf (last visited March 28, 2019).

¹⁴ Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009.

¹⁵ Testimony from Representative Michael Grieco, *3/6/2019 Meeting of the House Business & Professions Subcommittee*, *available at*: <https://thefloridachannel.org/videos/3-6-19-house-business-and-professions-subcommittee/> (last visited March 28, 2019).

¹⁶ Department of Business & Professional Regulation, *supra* note 14.

¹⁷ Sections 718.112(2)(l), and 719.1055(5), F.S.

- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building.
- Required the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules may not require an association to post a sign that diminishes the aesthetic value of a building.

Governor Scott stated his reasons for vetoing were:

“Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections.”¹⁸

Current law provides that:

- An association or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
 - The building has been certified for occupancy by the applicable government entity; and
 - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Current law only applies to fire sprinkler systems. An association may not vote to forego retrofitting a building with an ELSS.
- Local governments may not require an association to retrofit a fire sprinkler system before January 1, 2020.
- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.
 - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium. Residential cooperatives consist of units, which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.¹⁹

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height.

¹⁸ Letter from Rick Scott, Governor of the State of Fla., to Ken Detzner, Sec’y of State (June 26, 2017), *available at*: <https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf> (last visited March 28, 2019).

¹⁹ Sections 718.112(23), 719.103(22)-(23), & 719.1055(5), F.S.

Vote to Forego Retrofitting

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. An association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the association.²⁰

An association must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.²¹

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be held at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.²²

As part of the annual information collected from associations, the Division requires associations to report a membership vote to forego retrofitting, record a certificate if an association voted to forego, and, if retrofitting has been undertaken, the per-unit cost of such work. The Division must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.²³ According to the Division, they received 4,329 certificates to forego retrofitting since 2004. The Division also received 19 certificates stating retrofitting had been completed. Five of those certificates included the cost to complete retrofitting, which ranged from \$908 per unit to \$3,291 per unit with an average of \$2,196 per unit.

III. Effect of Proposed Changes:

Fire Protection System Inspection Reports

The bill amends s. 633.312, F.S., to require fire protection system inspection reports completed by fire protection system contractors to be submitted pursuant to a statewide uniform set of procedures. The procedures are to apply to a local authority having jurisdiction or a third-party vendor contracted for the collection of such reports. The State Fire Marshal is to adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

- A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.
- A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

²⁰ Sections 718.112(2)(l), & 719.1055(5), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

Building Permits for Fire Alarm Installation

The bill amends s. 553.792, F.S., to create a uniform application for building permits to install fire alarm systems. It allows a local enforcement agency to require any drawings, plans and supporting documentation be included with the submission of the uniform permitting application. The bill states the submission of such an application may be done electronically or by facsimile. The bill clarifies fire alarm systems that do not need a plan review are not required to submit an application under s. 553.792(1), F.S., which contains the process for submitting to a local government a building permit application for an alarm system that is not a low-voltage alarm system. The bill also allows a contractor to begin repair work immediately after submitting an application if the fire alarm system being repaired had been previously permitted by the local enforcement agency.

Firesafety Requirements for Condominium Associations

The bill amends s. 718.112, F.S., to require an association to ensure reasonable compliance with the Florida Fire Prevention Code. Under this section "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code.

Additionally, the local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023. A residential condominium association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

- By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;
- By July 1, 2021, obtain all necessary permits; and
- By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with such requirements, the authority having jurisdiction shall assess a penalty against the association in the amount of \$500 per day until compliance is met. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such penalty payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135, F.S.

The section also repeals current law that allows electrical contractors licensed under ch. 633, F.S., to certify a building's fire sprinkler compliance. Furthermore this section repealed language

that allows unit owners to vote to opt out of the required retrofitting for fire sprinkler systems. Under this repeal all applicable residential condominium buildings must comply with the new retrofitting deadline for fire sprinkler systems.

Effective Date

The effective date of the bill is upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

All applicable condominium buildings must comply with the new deadlines for retrofitting fire sprinkler or life safety systems, including associations that voted in the past to exempt their building from current requirements.

C. Government Sector Impact:

The Department of Business and Professional Regulation states they would incur non-recurring cost of \$46,352 the first year and a recurring cost of \$40,503 for staffing and

software updates relating to tracking association compliance and the collection of fines and penalties.²⁴

VI. Technical Deficiencies:

On line 140 “subsection (1)” should be replaced with “section” as fire alarm systems that do not require plans review are already covered by low-voltage alarm system installation permitting in s. 553.793(4), F.S.

VII. Related Issues:

The uniform permit application for the installation of fire alarm systems appears to only create uniformity for part of the application. The bill allows the local enforcement agency to require any drawings, plans, and supporting documentation with the submission of the Uniform Fire Alarm Permit Application. Allowing such additional documentation to be determined by the local enforcement agencies may defeat the stated purpose of creating a uniform permitting application.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 553.792, 633.216, 633.312, and 718.112.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 2, 2019

The CS clarifies requirements of fire alarm permits for repairs to fire alarm systems.

CS by Banking and Insurance on March 18, 2019:

The CS:

- Removes PACE funding for fire sprinklers and removes the alternatives to taxation on such improvements from the bill.
- Clarifies what the DFS rules should include as it relates to the creation on a uniform inspection form and submission process.
- Creates a uniform permit application for the installation of fire alarm systems and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

- B. **Amendments:**

None.

²⁴ Department of Business and Professional Regulation, Agency Analysis SB 908, (February 28, 2019) (on file with Senate Committee on Banking and Insurance).

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



384436

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hooper) recommended the following:

Senate Amendment

Delete line 146
and insert:
alarm permit application with the local enforcement agency if
the local enforcement agency requires fire alarm permits for
repairs.



541186

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete line 317

and insert:

2. Notwithstanding the requirements of subparagraph 1., an association is not required to expend in excess of the association's annual insurance savings, which are calculated by the reduction in annual premium attributable to the installation of the fire sprinkler system or engineered life safety system. If the savings cannot be determined, an association is not



541186

required to install a fire sprinkler system or engineered life safety system as required by this paragraph.

3.4. Notwithstanding s. 553.509, a residential association

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

And the title is amended as follows:

Delete line 56

and insert:

of State Fire Marshal; providing that an association is not required to expend in excess of a certain amount on the installation of a fire sprinkler system or engineered life safety system; providing that an association is not required to install such system under certain circumstances; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4/2/19

Bill Number (if applicable)

541188

Amendment Barcode (if applicable)

908

Topic Fire Safety Systems

Name Jim Milligan

Job Title Chief

Address 4360-55 av N

Phone 727-526-5650

Street

St. Pete

FL

City

State

Zip

33714

Email gmilligan@jeshelre-fire.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Chiefs 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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

4/2

Bill Number (if applicable)

541186

908

Amendment Barcode (if applicable)

Topic

Fire Sprinkler

Name

Ellyn Bogdanoff

Job Title

Address

Street

1 East Bed Bnd
Ft Lauderdale

33301

City

State

Zip

Phone

954 3646005

Email

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

FACTSS

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4/21/19

Bill Number (if applicable) 908

Topic _____

Amendment Barcode (if applicable) _____

Name Greg Pound

Job Title _____

Address 9166 Sun Dr

Phone _____

City Largo State FL Zip 33713

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

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.

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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)

Meeting Date 4-2-18

Bill Number (if applicable) 908

Topic Fire Smokeless Tobacco

Amendment Barcode (if applicable) _____

Name David Woodside

Job Title Assistant Fire Marshal

Address 405 E. 6th St

Phone (Scr) 657-5991

City West Palm Beach State FL Zip 33411

Email dwoodside@pbegov.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FCM 1A

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 4/24/9

Bill Number (if applicable) 908

Topic FIRE SAFETY

Amendment Barcode (if applicable) _____

Name Don Pasquone

Job Title Executive Director

Address PO Box 305

Phone _____

Street

Male Young Pl 33475

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL FIRE MARSHALS & INSPECTORS 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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

4-2-19

Bill Number (if applicable)

908

Amendment Barcode (if applicable)

Topic fire Safety Systems

Name Jim Millican

Job Title Chief

Address 4360 SS W N

Phone 727-526-5650

Street

SS Pk

FL

33714

Email jmillican@delmonte.com

City

State

Zip

Speaking:



Waive Speaking: ☐ In Support



(The Chair will read this information into the record.)

Representing

Florida Fire Chiefs Association

Appearing at request of Chair:



Lobbyist registered with Legislature:



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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

4/2

Bill Number (if applicable)

908

Amendment Barcode (if applicable)

Topic Fire Sprinkler

Name Ellen Bogdanoff

Job Title _____

Address

Street

1 E Bed Blvd

Phone _____

City

FT LAUD FL 33301

State

Zip

Email _____

Speaking:

☐ For

☒ Against

☐ Information

Waive Speaking:

☐ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

FACITSS

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.

This form is part of the public record for this meeting.

By the Committee on Banking and Insurance; and Senator Hooper

597-03202-19

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1 A bill to be entitled
 2 An act relating to firesafety systems; amending s.
 3 553.792, F.S.; requiring that a uniform fire alarm
 4 permit application, along with certain other
 5 information, be used and submitted to the local
 6 enforcement agency for any project requiring a fire
 7 alarm permit; providing that such application may be
 8 submitted by certain means; providing a signature
 9 requirement; specifying information required in, and a
 10 form for, such applications; providing applicability
 11 of certain building permit application procedures;
 12 authorizing contractors, under certain circumstances,
 13 to begin repairs of fire alarm system upon filing the
 14 uniform fire alarm permit application; amending s.
 15 633.216, F.S.; conforming a cross-reference; amending
 16 s. 633.312, F.S.; authorizing local authorities having
 17 jurisdiction to accept uniform summary inspection
 18 reports of certain fire hydrants and fire protection
 19 systems by certain means; requiring the State Fire
 20 Marshal to adopt rules implementing a uniform summary
 21 inspection report and certain submission procedures;
 22 providing requirements for such uniform report and
 23 procedures; providing that such procedures may not
 24 require a contractor to submit certain information;
 25 amending s. 718.112, F.S.; requiring that condominium
 26 association bylaws provide requirements for the
 27 association's reasonable compliance with the Florida
 28 Fire Prevention Code; defining the term "reasonable
 29 compliance"; providing construction; specifying

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 authorized means of compliance for certain residential
 31 condominiums; deleting a requirement for association
 32 bylaws to contain a certain certificate of compliance
 33 provision; deleting an exemption from a requirement to
 34 retrofit certain condominium property with a fire
 35 sprinkler system; deleting procedures for such
 36 exemption; extending the date before which a local
 37 authority having jurisdiction may not require
 38 completion of retrofitting with a fire sprinkler
 39 system; specifying the date before which a local
 40 authority having jurisdiction may not require
 41 completion of installation of an engineered life
 42 safety system; requiring a residential condominium
 43 association that is not in compliance with certain
 44 requirements to perform certain duties by specified
 45 dates; providing a penalty; requiring the Division of
 46 Florida Condominiums, Timeshares, and Mobile Homes of
 47 the Department of Business and Professional Regulation
 48 to collect such penalty payments and remit them to the
 49 Firefighter Assistance Grant Program within the
 50 Division of State Fire Marshal of the Department of
 51 Financial Services; deleting an obsolete provision;
 52 deleting requirements for condominium associations to
 53 report certain information to the Division of Florida
 54 Condominiums, Timeshares, and Mobile Homes and for the
 55 division to report certain information to the Division
 56 of State Fire Marshal; providing an effective date.

58 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government; fire alarm permit applications.—

(1) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(2) The procedures set forth in subsection (1) apply to the

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following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(3) For any project requiring a fire alarm permit, a uniform fire alarm permit application must be used and submitted to the local enforcement agency along with any required drawings, plans, and supporting documentation. The uniform fire alarm permit application may be submitted electronically or by facsimile and must be signed by the owner, contractor, or authorized representative of either such person. The uniform fire alarm permit application must contain the following information in substantially the following form:

UNIFORM FIRE ALARM PERMIT APPLICATION

Tax Folio No.:

Application No.:

Owner or Representative Name:

Property Address:

City: State: Zip:

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117 Phone:
 118 Fee Simple Titleholder's Name (if other than owner):
 119 Fee Simple Titleholder's Address (if other than owner):
 120
 121 Description of Work: New Install Replacement
 122 Addition Other
 123 Construction Type:
 124 Proposed Use:
 125 Alarm Contractor's Name:
 126 Alarm Contractor's Address:
 127 City: State: Zip:
 128 Phone:
 129 Alarm Contractor's License No:
 130
 131 Application is hereby made to obtain a permit to do the
 132 work and installation as indicated. I certify that no work or
 133 installation has commenced before the filing of this permit
 134 application. I certify that all of the foregoing information is
 135 true and accurate.
 136
 137 ...(Signature of Owner, Contractor, or Agent)...
 138 Printed Name:
 139
 140 (4) The procedures set forth in subsection (1) do not apply
 141 to the installation or replacement of a fire alarm system if a
 142 plans review is not required by the local enforcement agency.
 143 (5) For repairs to an existing fire alarm system that was
 144 previously permitted by the local enforcement agency, the
 145 contractor may begin the repair upon filing the uniform fire

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146 alarm permit application with the local enforcement agency.
 147 Section 2. Subsection (1) of section 633.216, Florida
 148 Statutes, is amended to read:
 149 633.216 Inspection of buildings and equipment; orders;
 150 firesafety inspection training requirements; certification;
 151 disciplinary action.—The State Fire Marshal and her or his
 152 agents or persons authorized to enforce laws and rules of the
 153 State Fire Marshal shall, at any reasonable hour, when the State
 154 Fire Marshal has reasonable cause to believe that a violation of
 155 this chapter or s. 509.215, or a rule adopted thereunder, or a
 156 minimum firesafety code adopted by the State Fire Marshal or a
 157 local authority, may exist, inspect any and all buildings and
 158 structures which are subject to the requirements of this chapter
 159 or s. 509.215 and rules adopted thereunder. The authority to
 160 inspect shall extend to all equipment, vehicles, and chemicals
 161 which are located on or within the premises of any such building
 162 or structure.
 163 (1) Each county, municipality, and special district that
 164 has firesafety enforcement responsibilities shall employ or
 165 contract with a firesafety inspector. Except as provided in s.
 166 633.312(2), ~~and~~ (3), and (4), the firesafety inspector must
 167 conduct all firesafety inspections that are required by law. The
 168 governing body of a county, municipality, or special district
 169 that has firesafety enforcement responsibilities may provide a
 170 schedule of fees to pay only the costs of inspections conducted
 171 pursuant to this subsection and related administrative expenses.
 172 Two or more counties, municipalities, or special districts that
 173 have firesafety enforcement responsibilities may jointly employ
 174 or contract with a firesafety inspector.

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Section 3. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and subsection (3) of that section is amended, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

(3)(a) The inspecting contractor shall provide to the building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable uniform summary inspection report established under this chapter. The local authority having jurisdiction may accept uniform summary inspection reports by United States mail, by hand delivery, by electronic submission, or through a third-party vendor that collects the reports on behalf of the local authority having jurisdiction.

(b) The State Fire Marshal shall adopt rules to implement a uniform summary inspection report and submission procedures to be used by all third-party vendors and local authorities having jurisdiction. For purposes of this section, a uniform summary inspection report must record the address where the fire protection system or hydrant is located, the company and person conducting the inspection and their license number, the date of the inspection, and the fire protection system or hydrant inspection status, including a brief summary of each deficiency, critical deficiency, noncritical deficiency, or impairment found. A contractor's detailed inspection report is not required to follow the uniform summary inspection report format. The State Fire Marshal shall establish by rule a submission procedure for each means provided under paragraph (a) by which a local authority having jurisdiction may accept uniform summary

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inspection reports. Each of the submission procedures must allow a contractor to attach additional documents with the submission of a uniform summary inspection report, including a physical copy of the contractor's detailed inspection report. A submission procedure may not require a contractor to submit information contained within the detailed inspection report unless the information is required to be included in the uniform summary inspection report.

(4) The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

Section 4. Paragraph (1) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(1) Firesafety.—An association must ensure reasonable compliance with the Florida Fire Prevention Code. For purposes

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of this paragraph, the term "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code Certificate of compliance. ~~A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium.~~

1. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023 2020. A residential condominium association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

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a. By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;
b. By July 1, 2021, obtain all necessary permits; and
c. By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with the requirements of this subparagraph, the authority having jurisdiction shall assess a penalty against the association in the amount of \$500 per day until it attains compliance. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135 By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required

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291 ~~fire sprinkler system is to take place. Within 30 days after the~~
 292 ~~association's opt-out vote, notice of the results of the opt-out~~
 293 ~~vote must be mailed or hand delivered to all unit owners.~~
 294 ~~Evidence of compliance with this notice requirement must be made~~
 295 ~~by affidavit executed by the person providing the notice and~~
 296 ~~filed among the official records of the association. After~~
 297 ~~notice is provided to each owner, a copy must be provided by the~~
 298 ~~current owner to a new owner before closing and by a unit owner~~
 299 ~~to a renter before signing a lease.~~

300 2. If there has been a previous vote to forego
 301 retrofitting, a vote to require retrofitting may be obtained at
 302 a special meeting of the unit owners called by a petition of at
 303 least 10 percent of the voting interests. Such a vote may only
 304 be called once every 3 years. Notice shall be provided as
 305 required for any regularly called meeting of the unit owners,
 306 and must state the purpose of the meeting. Electronic
 307 transmission may not be used to provide notice of a meeting
 308 called in whole or in part for this purpose.

309 3. As part of the information collected annually from
 310 condominiums, the division shall require condominium
 311 associations to report the membership vote and recording of a
 312 certificate under this subsection and, if retrofitting has been
 313 undertaken, the per-unit cost of such work. The division shall
 314 annually report to the Division of State Fire Marshal of the
 315 Department of Financial Services the number of condominiums that
 316 have elected to forego retrofitting.

317 2.4- Notwithstanding s. 553.509, a residential association
 318 may not be obligated to, and may forego the retrofitting of, any
 319 improvements required by s. 553.509(2) upon an affirmative vote

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320 of a majority of the voting interests in the affected
 321 condominium.

322 Section 5. This act shall take effect upon becoming a law.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 908
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

COMMITTEE: Community Affairs
ITEM: CS/SB 908
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

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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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1708

INTRODUCER: Commerce and Tourism Committee and Senator Rouson

SUBJECT: Tourist Development Councils

DATE: March 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1708 permits counties with a population of 900,000 or more to form more than one tourist development council. Such councils must be established by county ordinance and composed of a minimum of nine members, all appointed by the governing board of the county. The bill specifies the requirements for such tourist development councils pertaining to council membership and responsibilities. Tourist development councils established under the authority of the bill operate in the same manner as such councils established under current law, but differ on council membership qualification requirements.

If a county has more than one tourist development council, a recommendation for a tourist development tax-funded public facility project must originate from the tourist development council for the area where the proposed project is located.

The bill takes effect July 1, 2019.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option taxes on short-term¹ rentals or leases of accommodations.² The taxes are generally referred to as “tourist development taxes,” but consist of several separate tax levies. The taxes include:

- 1 or 2 Percent Tax:³ This tax may be levied by the county’s governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:⁴ This tax may be levied by an extraordinary vote⁵ of a county’s governing board or by referendum approval, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- High Tourism Impact Tax:⁶ By extraordinary vote of the governing board of the county, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.⁷
- Professional Sports Franchise Facility Tax:⁸ In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:⁹ A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

Depending on a county’s eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number

¹ Section 125.0104(3)(a), F.S. provides that the tax applies to rentals or leases of 6 months or less.

² Section 125.0104, F.S.

³ Section 125.0104(3)(c), F.S.

⁴ Section 125.0104(3)(d), F.S.

⁵ “Extraordinary vote” is not defined by law, but by its plain definition would appear to mean something greater than an ordinary vote by simple majority. See Op. Att’y Gen. Fla.2010-05.

⁶ Section 125.0104(3)(m), F.S.

⁷ A county may be designated as having a “high tourism impact” by the Department of Revenue as provided by s. 125.0104(3)(m)2., F.S. The tax is levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Hillsborough, Lee, and Walton counties are eligible to levy it.

⁸ Section 125.0104(3)(l), F.S.

⁹ Section 125.0104(3)(n), F.S.

of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.¹⁰

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	9	65
Levying:	63	53	44	6	30

These local option taxes may be administered by the Department of Revenue or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.¹¹

As a requirement for adopting tourist development taxes, a county's tourist development council¹² must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months of implementation, the tax district where the tax will be imposed, and a list prioritizing the uses of the revenue. The county's governing board must approve any changes to the plan after the levy has been enacted.¹³

Local option tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to:

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
 - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
 - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies; or
- Finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.¹⁴

¹⁰ Office of Economic and Demographic Research, *2018 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties*, available at <http://edr.state.fl.us/content/local-government/data/county-municipal/2018LOTTRates.pdf>, (published August 23, 2018).

¹¹ See s. 125.0104(3)(b) and (d), F.S.

¹² Also referred to as a "tourism" development council.

¹³ See s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

¹⁴ Section 125.0104(5)(a), F.S.

County Tourist Development Councils

The governing board of each county that levies tourist development taxes must form a tourist development council. Section 125.0104(4)(e), F.S., provides the authority and requirements for county tourist development councils and their memberships. Requirements include:

- The council must be called “ (name of county) Tourist Development Council”;
- The council shall be composed of nine members appointed by the governing board of the county;
- A member of the county governing board shall serve as a member of the council;
- Two members of the council must be elected municipal officials;
- Six members of the council must be involved in the tourism industry, of whom no less than three and no more than four shall be owners or operators of motels, hotels, recreational vehicles parks, or other tourist accommodations in the county;
- All members of the council shall be electors of the county;
- The governing board of the county may elect a chair for the council or allow the council to elect its own chair;
- The chair shall be appointed or elected annually and may be reappointed or elected;
- Members of the council shall serve staggered 4 year terms;
- The council shall meet at least once each quarter;
- The council shall recommend to the governing board of the county special projects and uses for tourist development tax revenue;
- The council shall continuously review expenditures of revenues from the tourist development taxes; and
- The council shall report unauthorized/questionable expenditures from the tourist development tax revenues to the county governing board and Department of Revenue for their review.

County Population Estimates

The provisions put forth in CS/SB 1708 apply to counties with a population of 900,000 or more according to the latest decennial census. According to the last census in 2010 the following six counties have populations of 900,000 or more:¹⁵

1. Miami-Dade, population 2,496,435
2. Broward, population 1,748,066
3. Palm Beach, population 1,320,134
4. Hillsborough, population 1,299,226
5. Orange, population 1,145,956
6. Pinellas, population 916,542

¹⁵ See Office of Economic and Demographic Research, *Population and Demographic Data – Census Data*, available at: <http://edr.state.fl.us/Content/population-demographics/data/index-censusdata.cfm> (last visited March 18, 2019).

According to the latest population estimates by the Office of Economic and Development Research (EDR), Duval County will exceed the population threshold of 900,000 by the 2020 census.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 125.0104, F.S., to allow counties with a population of 900,000 or more, according to the latest decennial census, to form more than one tourist development council, upon a finding that more than one tourist development council best serves the county's tourism industry needs. The bill provides that such councils must be established by a county resolution and counties must organize such councils in accordance with the terms specified in the bill, as opposed to the requirements in s. 125.0104(4)(e), F.S.

The requirements for tourist development councils specified in the bill align with those in s. 125.0104(4)(e), F.S., with the exception of council membership requirements. Under the bill, a tourist development council shall be composed of a minimum of nine members who are all appointed by the governing board of the county. The bill does not specify qualifications for members appointed to the council, except that council members must be electors of the county.

Additionally, to account for the prospect of multiple tourist development councils in a single county, the bill specifies that proposed public facility projects funded with tourist development tax revenue must be recommended by at least one of the tourist development councils designated for the area where the project is located.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁶ Office of Economic and Demographic Research, *The Florida Legislature Econographic News*, 2019 Volume 1, available at <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited March 28, 2019).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not address how tourist development tax revenue would be apportioned in the counties that create more than one tourist development council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 125.0104(4)(c), F.S., requires a county that is considering the levying of tourist development taxes to form a tourist development council prior to levying the tax. It is the tourist development council's responsibility to present to a plan for tourist development which includes anticipated tourist development tax revenues and expense allocations to the county governing board. The county governing board shall adopt the plan as part of the ordinance levying the tax.¹⁷ The bill does not rectify the creation of additional tourist development councils with this subsection's requirement for the council to exist prior to the levying of tourist development taxes.

VIII. Statutes Affected:

This bill substantially amends section 125.0104 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 Commerce and Tourism Committee on March 18, 2019:

The committee substitute clarifies the membership requirements for tourist development councils in counties that have more than one. The committee substitute also requires proposed public facility projects for tourist development tax revenues to be recommended

¹⁷ Section 125.0104(4)(d), F.S.

by the tourist development council for the area where the public facility is located, if the proposed project is located in a county with more than one tourist development council.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senators Rouson
and Hutson

577-03166-19

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A bill to be entitled

An act relating to tourist development councils;
amending s. 125.0104, F.S.; conforming provisions to
changes made by the act; authorizing certain counties
to adopt a resolution that establishes and appoints
members of more than one tourist development council
upon a certain finding; requiring that such counties
organize their tourist development councils in
accordance with specified requirements upon the
adoption of such resolution; conforming a provision to
changes made by the act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section
125.0104, Florida Statutes, is amended, paragraph (f) is added
to that subsection, and paragraph (a) of subsection (5) of that
section is amended, to read:

125.0104 Tourist development tax; procedure for levying;
authorized uses; referendum; enforcement.—

(4) ORDINANCE LEVY TAX; PROCEDURE.—

(b) At least 60 days ~~before~~ ~~prior to~~ the enactment of the
ordinance levying the tax, the governing board of the county
shall adopt a resolution that establishes and appoints
~~establishing and appointing~~ the members of the county tourist
development council, as prescribed in paragraph (e) or, if there
is more than one tourist development council, paragraph (f), and
that indicates ~~indicating~~ the intention of the county to
consider the enactment of an ordinance levying and imposing the

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tourist development tax.

(f)1. Notwithstanding any other law, a county with a
population of 900,000 or more, according to the last decennial
census, may adopt a resolution that establishes and appoints
members of more than one tourist development council upon a
finding that more than one tourist development council best
serves that county's tourism industry needs. Upon the adoption
of such resolution, the county must organize its tourist
development councils in accordance with the requirements
provided in subparagraph 2. instead of the requirements provided
in paragraph (e).

2. The governing board of a county as described in this
paragraph which levies and imposes a tourist development tax
under this section shall appoint for each tourist development
council it establishes an advisory council to be known as the
"(name) Tourist Development Council." Each council shall be
established by ordinance and shall be composed of a minimum of
nine members who are appointed by the governing board. All
members of the councils shall be electors of the county. The
governing board of the county shall have the option of
designating the chairs of the councils or allowing the councils
to elect their chairs. The chairs shall annually be appointed or
elected and may be reelected or reappointed. The members of the
councils shall serve for staggered terms of 4 years. The terms
of office of the original members shall be prescribed in the
resolution required under paragraph (b). The councils shall meet
at least once each quarter and, from time to time, shall make
recommendations to the county governing board for the effective
operation of the special projects or for uses of the tourist

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development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. A council shall continuously review expenditures of revenues from the tourist development trust fund and shall receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures that the councils believe to be unauthorized shall be reported to the county governing board and the Department of Revenue. The governing board and the department shall review the findings of the councils and take appropriate administrative or judicial action to ensure compliance with this section.

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:

a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied;

b. Auditoriums that are publicly owned but are operated by organizations that are exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied; or

c. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or

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subcounty special taxing district in which the tax is levied;

2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency;

5. To finance beach park facilities, or beach, channel, estuary, or lagoon improvement, maintenance, renourishment, restoration, and erosion control, including construction of beach groins and shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, channel, estuary, lagoon, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or

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loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities; or

6. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e) or by at least one of the tourist development councils created pursuant to paragraph (4)(f) for such council's designated area. Tax revenues may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities. Tax revenues may be used for these purposes only if the following conditions are satisfied:

a. In the county fiscal year immediately preceding the fiscal year in which the tax revenues were initially used for such purposes, at least \$10 million in tourist development tax revenue was received;

b. The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;

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c. No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues, and sources of funding for the remaining cost are identified and confirmed by the county governing board;

d. At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism as provided by this subsection; and

e. An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 1708
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1758

INTRODUCER: Community Affairs Committee; Environment and Natural Resources Committee; and
Senators Mayfield, Simmons, Harrell, and others

SUBJECT: Water Quality Improvements

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Peacock	Yeatman	CA	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1758 creates the “Clean Waterways Act,” including a grant program, subject to appropriation, for wastewater treatment facility or onsite sewage treatment and disposal system (OSTDS) improvements or connections within a basin management action plan (BMAP) or alternative restoration plan. The bill requires the Department of Environmental Protection (DEP) and the Department of Health (DOH) to develop a report on the impacts of a type two transfer of the OSTDS program.

The bill revises the requirements for all BMAPs. The bill:

- Requires that each BMAP include a plan, with specific timelines, to be submitted by each local government within the BMAP area for each wastewater treatment plant project and each OSTDS remediation plan.
- Expands and revises the OSTDS remediation plans required for the Outstanding Florida Springs to apply to all BMAPs.
- Imposes penalties for a local government’s failure to meet the deadlines required under the plan, including a prohibition on participation in DEP’s wastewater grant program and existing civil and criminal penalties for pollution. However, the bill authorizes DEP to grant an extension of time upon a showing of good cause or to reduce penalties based on expenditures for improvements and upgrades.
- Requires local governments within a BMAP or with impaired waters to adopt the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

The bill requires a wastewater treatment facility that unlawfully discharges raw or partially treated sewage into a waterway or aquifer to provide notification to its customers within 24 hours after discovering the discharge. Effective July 1, 2024, the bill prohibits sanitary sewage disposal into Indian River Lagoon without providing advanced waste treatment.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.

Phosphorus and nitrogen are derived from natural and human-made sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.¹

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.²

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.³ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, DEP is required to establish a TMDL for impaired waterbodies.⁴ 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.⁵ 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,

¹ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Mar. 15, 2019).

² EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Mar. 15, 2019).

³ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Mar. 15, 2019).

⁴ Section 403.067(1), F.S.

⁵ Section 403.031(21), F.S.

and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.⁶

Basin Management Action Plans and Best Management Practices

DEP is the lead agency in coordinating the development and implementation of TMDLs.⁷ 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;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.⁸

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.⁹ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution 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.¹⁰

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 five years and revisions to the BMAP must be made as appropriate.¹¹

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

⁶ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “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 sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

⁷ Section 403.061, F.S. DEP has 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.

⁸ Section 403.067(7), F.S.

⁹ *Id.*

¹⁰ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 15, 2019).

¹¹ Section 403.067(7)(a)6., F.S.

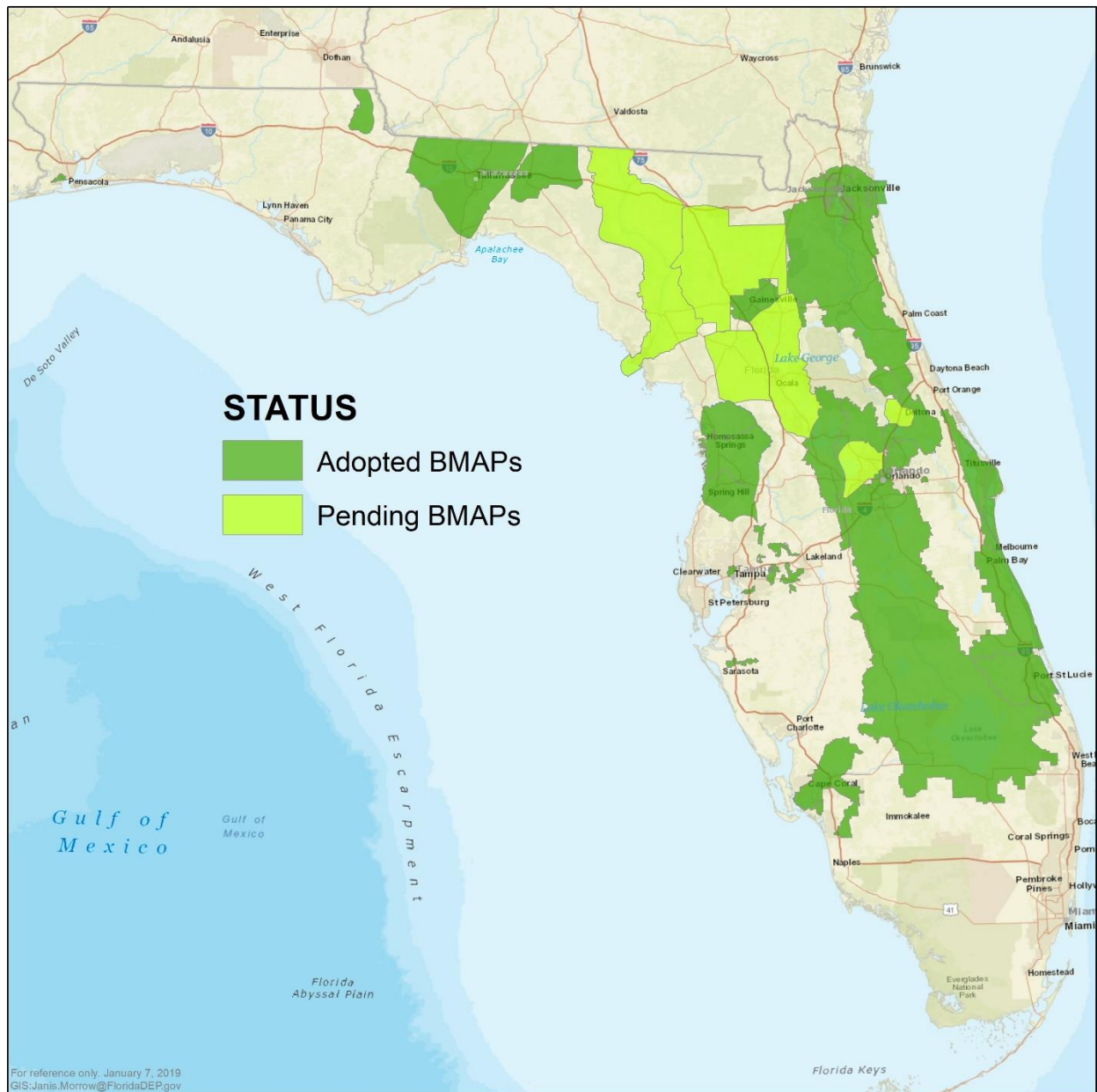
quality monitoring.¹² A nonpoint source discharger may be subject to enforcement action by DEP or a water management district based on a failure to implement these requirements.¹³ BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.¹⁴

Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic below shows the state's adopted and pending BMAPs.

¹² Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

¹³ Section 403.067(7)(b)2.h., F.S.

¹⁴ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Mar. 15, 2019).



BMAPs for Outstanding Florida Springs

In 2016, the Florida Legislature passed the Florida Springs and Aquifer Protection Act, which identified 30 "Outstanding Florida Springs" (OFS) that have additional statutory protections and requirements.¹⁵ Key aspects of the Springs and Aquifer Protection Act relating to water quality include:

¹⁵ Ch. 2016-1, Laws of Fla.; see s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs

- The development of an onsite sewage treatment and disposal system (OSTDS) remediation plan if it has been determined that OSTDSs within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or that remediation is necessary to achieve the TMDL;
- A 20-year timeline for implementation of the TMDL, including 5-, 10-, and 15-year targets; and
- The prohibition against new OSTDSs on parcels of less than 1 acre, unless the system complies with the OSTDS remediation plan.

The OSTDS remediation plan must include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for a sewage system or group of systems.¹⁶ The options must be cost-effective and financially feasible projects necessary to reduce the nutrient impacts from OSTDSs within the area.¹⁷

In June 2018, DEP adopted 13 restoration plans, addressing all 24 nitrogen-impaired OFS.¹⁸ Eight of these plans are currently effective, while five others are pending the outcome of legal challenges on various alleged deficiencies in the BMAP.¹⁹ These deficiencies include lack of specificity in the required list of projects and programs identified to implement a TMDL, lack of detail in cost estimates, incomplete or unclear strategies for nutrient reduction, and failure to account for population growth and agricultural activity.

The Wakulla Springs BMAP serves as a successful example of BMAP implementation with respect to its approach to wastewater and OSTDSs. The nitrogen loading for Wakulla Springs was allocated as described in the table below. The table includes the following acronyms: UTF (Urban Turfgrass Fertilizer), FF (Farm Fertilizer), and LW (Livestock Waste).²⁰

bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.

¹⁶ Section 373.807(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Our Santa Fe River, Inc., et. al. v. DEP*, No. 18-1601, DEP No. 18-2013; *Sierra Club v. DEP*, No. 17-1175, DEP No. 18-0204; *Friends of Wekiva River, Inc. v. DEP*, No. 18-1065, DEP No. 18-0217; *Thomas Greenhalgh v. DEP*, No. 17-1165, DEP No. 18-0204; *Paul Still v. DEP*, No. 18-1061; *Save the Manatee Club, Inc. v. DEP*, No. 17-1167, DEP No. 18-0206; *Silver Springs Alliance, Inc. and Rainbow River Conservation, Inc. v. DEP*, No. 18-1060, DEP No. 18-0211.

²⁰ DEP, *Upper Wakulla River and Wakulla Springs Basin Management Action Plan* (October 2015), available at <https://floridadep.gov/dear/water-quality-restoration/documents/upper-wakulla-river-and-wakulla-springs-basin-management-0> (last visited Mar. 16, 2019).

Table 3. Estimated nitrogen load to groundwater by source in the BMAP area

Nitrogen Source	Total Nitrogen Load to Groundwater in Pounds of Nitrogen Per Year (lb-N/yr)	% Contribution
OSTDS	272,313	34
UTF	77,282	10
Atmospheric Deposition	212,134	27
FF	161,985	21
Sports Turfgrass Fertilizer (STF)	15,398	2
LW	23,840	3
Wastewater Treatment Facility (WWTF)	26,697	3
Total	795,386	100

A priority focus area of an OFS means the area or areas of a basin where the Florida Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate water management districts, and delineated in a BMAP.²¹ Wastewater treatment facilities within the priority focus areas are subject to wastewater effluent standards based on the size of the facility, with the largest facilities being required to meet the strictest requirements and the smallest plants being authorized to have slightly more relaxed standards. For reference, untreated wastewater generally has a total nitrogen (TN) concentration of 20-70 mg/L, secondary treatment yields 15-30 mg/L, and tertiary treatment yields 3-8 mg/L.²²

Table 13. Wastewater effluent standards for PFA1 and PFA2

95% of the Permitted Capacity (gpd)	TN Concentration Limits for RIBs and Absorption Fields (mg/L)	TN Concentration Limits for All Other Land Disposal Methods (mg/L)
Greater than 100,000	3	3
20,000 to 100,000	3	6
Less than 20,000	6	6

Appendix D of the Wakulla BMAP sets forth the OSTDS remediation plan, which is still under development. The remediation plan prohibits new conventional systems on lots of less than one acre within the priority focus areas, unless the OSTDS includes enhanced treatment of nitrogen or the OSTDS permit applicant demonstrates that sewer connections will be available within five

²¹ Section 373.802(5), F.S.

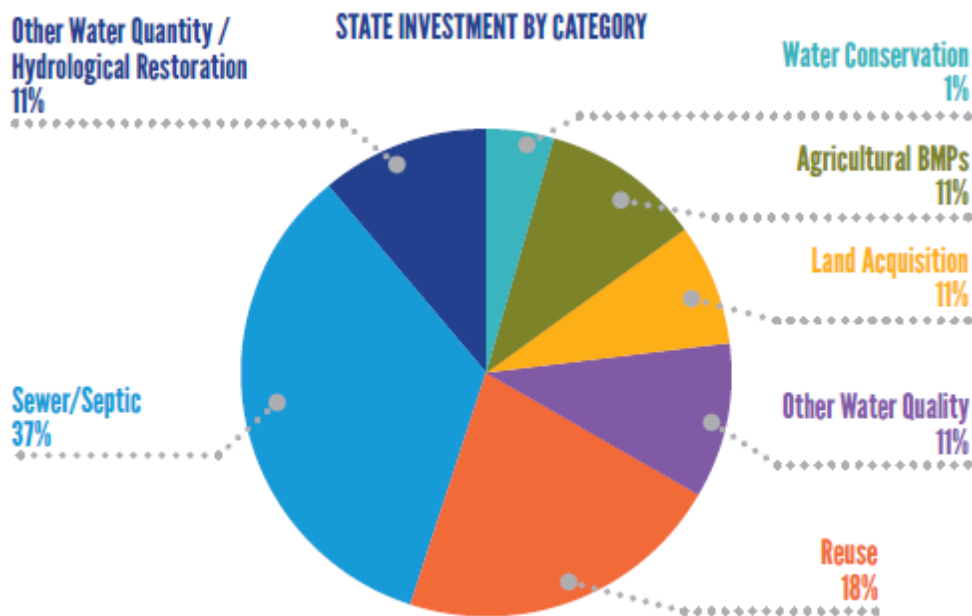
²² Richard O. Carey, Kati W. Migliaccio, *Contribution of Wastewater Treatment Plant Effluents to Nutrient Dynamics in Aquatic Systems: A Review*, Environmental Management (2009) (on file with the Environment and Natural Resources Committee).

years. Local governments and utilities are expected to develop master wastewater treatment feasibility analyses to identify specific areas to be sewerred within 20 years of BMAP adoption.

For existing OSTDSs, the remediation policy for existing systems does not go into effect upon BMAP adoption, but rather following completion of the master wastewater treatment feasibility analyses, DOH rulemaking, and creation of a funding program to help offset the costs to homeowners. Regardless, the policy must go into effect no later than five years after BMAP adoption. Existing systems must include nitrogen-reducing enhancements. The OSTDS remediation plan includes a planning tool created by DEP to provide credible scientific information, OSTDS remediation options in the area, and a public education plan.

Funding for Outstanding Florida Springs

The Legislature created a carveout to allocate \$50 million annually in funding for Florida springs in 2016.²³ This funding has enabled DEP to assist local governments and other stakeholders to identify and construct projects that are targeted to the springs' nutrient sources and that are imperative to achieving restoration goals. Specifically, DEP's efforts have emphasized land acquisition for conservation, and implementation of enhanced best management practices for agriculture, including innovative cost-share programs and addressing wastewater issues by wastewater treatment upgrades and sewerred efforts.²⁴



Decisions for the selection of springs projects that will receive state funding in any given year is based upon DEP's consideration of the following factors:

- Nutrient reductions or measurable improvements in water quality;

²³ Ch. 2016-201, Laws of Fla.; s. 375.401, F.S.

²⁴ DEP, *Springs Restoration Project Plan for the Legislative Budget Commission* (Fiscal Year 2018-2019), available at <https://floridadep.gov/sites/default/files/LBC%20Report%20FY2018-2019.pdf> (last visited Mar. 16, 2019).

- Water savings or measurable water quantity improvements;
- Cost sharing and leveraging opportunities referred to as “match;”
- Readiness to proceed in a timely manner;
- Proximity to priority focus areas or springs; and
- Cost effectiveness.²⁵

Restoration Plans as Alternatives to TMDLS

DEP encourages local stakeholders to develop restoration plans²⁶ at the earliest practicable time to restore waters not meeting state water quality standards.²⁷ The restoration plans are designed to be a more streamlined process than the BMAP process and can help focus local and state resources directly on measures to improve water quality.²⁸ Under the Florida Watershed Restoration Act,²⁹ DEP can forgo establishing a TMDL for a waterbody if DEP can document that there is reasonable assurance existing or proposed pollution control mechanisms or programs that will effectively address the impairment.³⁰ These restoration plans depend on local stakeholders to gather necessary documentation to demonstrate reasonable assurance that the proposed control mechanisms will restore the particular waterbody.³¹

The following information must be documented in a restoration plan:

- Description of the impaired waterbody;
- Description of water quality or aquatic ecological goals;
- Description of proposed management actions to be undertaken;
- Description of procedures for monitoring and reporting results; and
- Description of and commitment to proposed corrective actions.³²

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida’s water resources. The majority of Florida’s domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.³³

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

²⁵ DEP, *Springs Funding Guidance* (2017), available at <https://floridadep.gov/sites/default/files/Spring%20Guidance%20Document%202017.pdf> (last visited Mar. 16, 2019).

²⁶ Fla. Admin. Code R. 62-303.600.

²⁷ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLs – Assessment Category 4b and 4e Plans*, 1 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf> (last visited Mar. 13, 2019).

²⁸ *Id.* at 1-2.

²⁹ Ch. 99-223, Laws of Fla.

³⁰ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLs – Assessment Category 4b and 4e Plans*, 2 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf> (last visited Mar. 13, 2019).

³¹ *Id.*

³² *Id.* at 6-7.

³³ DEP, *General Facts and Statistics About Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Mar. 15, 2019).

from DEP.³⁴ Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater 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.³⁵

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.³⁶ 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. 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.³⁷ DEP issues operation permits for a period of 5 years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities.³⁸

In its 2016 Report Card for Florida's infrastructure, the American Society of Civil Engineers reported that the state's wastewater system is increasing in age and the condition of installed treatment and conveyance systems is declining.³⁹ As existing infrastructure ages, Florida utilities are placing greater emphasis on asset management systems to maintain service to customers. Population growth, aging infrastructure, and sensitive ecological environments are increasing the need to invest in Florida's wastewater infrastructure.

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.⁴⁰ The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁴¹ The reclaimed water product must also have received high level disinfection, which is a standard of disinfection defined by DEP rule.⁴²

Nutrient or Contaminant	Maximum concentration annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

³⁴ Section 403.087, F.S.

³⁵ DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Mar. 15, 2019).

³⁶ 33 U.S.C. s. 1342.

³⁷ Sections 403.061 and 403.087, F.S.

³⁸ Section 403.087(3), F.S.

³⁹ American Society of Civil Engineers, *Report Card for Florida's Infrastructure* (2016), available at https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf (last visited Mar. 19, 2019).

⁴⁰ Section 403.086(2), F.S.

⁴¹ Section 403.086(4), F.S.

⁴² Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters in the state without providing advanced waste treatment approved by DEP.⁴³ Specifically, Tampa Bay is viewed as a success story for this type of prohibition.

[Tampa Bay is] one of the few estuaries in the U.S. that has shown evidence of improving environmental conditions. These water-quality improvements have been due, in large part, to upgrades in wastewater treatment practices at municipal wastewater-treatment plants in the region. Since 1980, all wastewater treatment plants that discharge to the bay or its tributaries have been required by state legislation to meet advanced wastewater treatment standards, a step that has reduced the annual nutrient loads from these sources by about 90 percent.⁴⁴

Sanitary Sewer Overflows

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.⁴⁵ A SSO may subject the owner or operator of a facility to civil penalties of not more than \$10,000 for each offense (each day during the period in which a violation occurs constitutes a separate offense), a criminal conviction or fines, and additional administrative penalties.⁴⁶

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.⁴⁷

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and

⁴³ Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

⁴⁴ U.S. Department of the Interior and U.S. Geological Survey, *Integrating Science and Resource Management in Tampa Bay, Florida* (2011), available at https://pubs.usgs.gov/circ/1348/pdf/Chapter%205_105-156.pdf (last visited Mar. 16, 2019).

⁴⁵ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 15, 2019).

⁴⁶ Sections 403.121 and 403.141, F.S.

⁴⁷ DEP, SSOs, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Mar. 15, 2019).

- Constructing wet weather storage and treatment facilities to treat excess flows.⁴⁸

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as “septic systems,” can contain any one or more 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.⁴⁹ OSTDSs generally consist of two basic parts: the septic tank and the drainfield.⁵⁰ Waste from toilets, sinks, washing machines and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁵¹

The Department of Health (DOH) administers OSTDS 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.⁵² There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.⁵³

In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁵⁴ For example, in rural areas and low-density developments, central sewer systems are not cost effective. Less than one percent of OSTDS in Florida are actively managed under operating permits and maintenance agreements.⁵⁵ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.⁵⁶ In Florida, approximately 30-40 percent of the

⁴⁸ *Id.*

⁴⁹ DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Mar. 15, 2019); see s. 381.0065(2)(k), F.S. “Onsite sewage treatment and disposal system” is defined as “a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.”

⁵⁰ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 15, 2019).

⁵¹ *Id.*

⁵² Section 381.0065(3), F.S.

⁵³ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 15, 2019).

⁵⁴ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 15, 2019). The report begins on page 56 of the PDF.

⁵⁵ *Id.*

⁵⁶ *Id.*

nitrogen levels are reduced in a system that is installed 24 inches or more from groundwater.⁵⁷ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.⁵⁸

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.⁵⁹ Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from DOH.⁶⁰

Water Quality Monitoring

One of DEP's goals is to determine the quality of the state's surface and ground water resources. This goal is primarily accomplished through several water quality monitoring strategies that are administered through the Water Quality Assessment Program. Responsibilities of the program include: monitoring and assessing how water quality is changing over time; the overall water quality and impairment status of the state's water resources; and the effectiveness of water resource management, protection, and restoration programs.⁶¹

Within the Water Quality Assessment Program, DEP administers the Watershed Monitoring Program. This program is responsible for collecting reliable data through water samples from rivers, streams, lakes, canals, and wells around the state.⁶² This information is used by DEP to determine which waters are impaired and what restoration efforts are needed.

Urban Fertilizer Usage and Florida's Model Ordinance

The Legislature passed the Protection of Urban and Residential Environments and Water Act in 1999.⁶³ The law encourages county and municipal governments to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an equivalent requirement to protect local surface and groundwater quality.⁶⁴ The law requires each local government located within the watershed of a water body or water segment that is listed as impaired by nutrients to adopt, at minimum, the ordinance, unless the county or municipal government already had a fertilizer use ordinance before July 1, 2009.⁶⁵ As part of the Florida Springs and Aquifer Protection Act, the Legislature required each local government that includes an OFS or any part of a springshed or OFS priority focus area and had not adopted a fertilizer ordinance, to

⁵⁷ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf> (last visited Mar. 15, 2019).

⁵⁸ 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/files/SS/SS55000.pdf> (last visited Mar. 15, 2019).

⁵⁹ Section 381.00655, F.S.

⁶⁰ *Id.*

⁶¹ DEP, *Water Quality Assessment Program*, <https://floridadep.gov/dear/water-quality-assessment> (last visited Mar. 21, 2019).

⁶² DEP, *Watershed Monitoring*, <https://floridadep.gov/dear/watershed-monitoring-section> (last visited Mar. 21, 2019).

⁶³ Ch. 2009, ss. 2-5, Laws of Fla.

⁶⁴ Section 403.9337(1), F.S.

⁶⁵ Section 403.9337(2), (3), F.S.

develop, enact, and implement an ordinance by July 1, 2017.⁶⁶ Currently, 32 counties have adopted a fertilizer ordinance.⁶⁷

Application of fertilizer in urban areas can impact watersheds when it runs off lawns and impervious surfaces into stormwater collection systems or directly into the surface water. DEP has provided guidelines to minimize the impact of urban fertilizer use and adopted the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.⁶⁸ The model ordinance provides counties and municipalities with a range of options to help minimize fertilizer inputs from urban applications. Some of the suggestions contained in the model ordinance are:

- Restricting the times fertilizer may be applied, such as restricting its application during the rainy season;
- Creating fertilizer free zones around sensitive waterbodies such as ponds, streams, watercourses, lakes, canals, or wetlands;
- Controlling application practices by, for example, restricting fertilizer application on impervious surfaces and requiring prompt cleanup of any fertilizer that is spilled on impervious surfaces; and
- Managing grass clipping and vegetative matter by disposing of such materials properly rather than simply blowing them into the street, ditches, stormwater drains, or waterbodies.⁶⁹

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary⁷⁰ that runs along 156 miles of Florida's east coast and connects Volusia, Brevard, Indian River, St. Lucie, and Martin counties.⁷¹ The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.⁷² There are four Basin Management Action Plans (BMAP) that have been adopted for the IRL.⁷³

The IRL is one of the most biologically diverse estuaries in North America and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.⁷⁴ The estimated economic value received from the IRL in 2014 was

⁶⁶ Section 373.807(2), F.S.

⁶⁷ UF/IFAS Florida-Friendly Landscaping Program, *Florida Fertilizer Ordinances* (updated Jan. 10, 2019), available at <https://ffl.ifas.ufl.edu/pdf/FloridaFertilizerOrdinances.pdf?v=20190219> (last visited Mar. 15, 2019).

⁶⁸ DEP, *Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes* (2015), available at <https://ffl.ifas.ufl.edu/pdf/dep-fert-modelord.pdf> (last visited Mar. 15, 2019).

⁶⁹ *Id.* at 6-9.

⁷⁰ An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Mar. 15, 2019); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Mar. 15, 2019).

⁷¹ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Mar. 15, 2019).

⁷² *Id.*

⁷³ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, x (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Mar. 15, 2019); DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 15, 2019).

⁷⁴ IRL National Estuary Program, *About the Indian River Lagoon*, <http://www.irlcouncil.com/> (last visited Mar. 15, 2019).

approximately \$7.6 billion.⁷⁵ Industry groups that are directly influenced by the IRL support nearly 72,000 jobs, collecting wages totaling more than \$1.2 billion annually.⁷⁶

The balance of the IRL's delicate ecosystem has been disturbed by increased development in the area. Development has led to harmful levels of nutrients and sediments entering the lagoon as a result of stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, septic systems, and excess fertilizer applications.⁷⁷ In the last decade, as a result of the pollution, there have been algae blooms; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.⁷⁸ Additionally, thick layers of muck have built up at the bottom of waterbodies and now cover an estimated 15,900 acres of the lagoon bottom in Brevard County, in some areas measuring more than 6 feet thick.⁷⁹

Type Two Transfer

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program, or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.⁸⁰

III. Effect of Proposed Changes:

Section 1 provides a short title for the act, "Clean Waterways Act."

Section 2 requires the Department of Environmental Protection (DEP), in coordination with the Department of Health (DOH), to develop a report for presentation to the Legislature which addresses the impacts of a type two transfer of the onsite sewage treatment and disposal system (OSTDS) program. The report must include revisions to state law, including budgetary changes, which would need to be addressed. If DEP is authorized to develop a memorandum of agreement with DOH describing how a type two transfer would be implemented if the Legislature authorized such a transfer, the report would not be required.

⁷⁵ East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi (Aug. 26, 2016), available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Mar. 15, 2019).

⁷⁶ *Id.* at ix. The main IRL-related industry groups are categorized as: Living Resources; Marine Industries; Recreation and Visitor-related; Resource Management; and Defense & Aerospace.

⁷⁷ Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida*, xii (Jan. 2019), available at <https://www.dropbox.com/sh/59riyz9eevvdq0/AACc4Rq3SJqiO-ZOYUA3TJMsa?dl=0&preview=Draft+2019+Save+Our+Indian+River+Lagoon+Project+Plan+Update+012919.pdf> (last visited Mar. 15, 2019).

⁷⁸ *Id.* at 1.

⁷⁹ *Id.* at 52.

⁸⁰ Section 20.06(2), F.S.

Section 3 amends s. 387.807, F.S., to revise basin management action plan (BMAP) requirements for Outstanding Florida Springs (OFS). The bill:

- Requires that the priority ranking for each listed project be based on nutrient load per project, project readiness, cost effectiveness, overall environmental benefit, location within the plan area, local matching funds, and water savings or quantity improvements;
- Requires that each BMAP include, as set out in section 7 of the bill, a plan submitted by each local government within the plan area for each wastewater treatment plant project and each OSTDS remediation plan, and adopts the penalties set out in that section;
- Requires local governments that include an OFS or any part of a springshed or priority focus area of an OFS to:
 - Adopt, enact, and implement a fertilizer use ordinance by July 1, 2020;
 - Conduct educational campaigns, enforcement programs, and notification of property owners subject to the ordinance; and
 - Submit a report on its efforts to DEP for publication on DEP's website;
- Prohibits local governments from participating in DEP's wastewater grant program that fail to implement an ordinance;
- Transfers the requirement for an OSTDS remediation plan to the general BMAP provisions to require a revised version of the plans for all BMAPs; and
- Requires that agricultural operations located within the associated Water Body Identification Number sign a notice of intent to implement agricultural best management practices or conduct water quality monitoring if a BMAP or alternative restoration plan has not been adopted within 90 days of the adoption of a total maximum daily load (TMDL).

Section 4 amends s. 373.811, F.S., to correct a cross-reference.

Section 5 amends s. 373.031, F.S., to define the following terms:

- “Wastewater facilities” or “wastewater treatment facilities” to mean any of the following: the collection and transmission system, the wastewater treatment plant, and the reuse or disposal system.
- “Wastewater plant” or “wastewater treatment plant” to mean any plant or other works used for the purpose of treating, stabilizing, or holding wastewater.

Section 6 creates s. 403.0616, F.S., to require DEP, subject to appropriation, to establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The bill encourages DEP to form public-private partnerships with established scientific entities with existing, proven real-time water quality monitoring equipment and experience deploying such equipment.

Section 7 amends s. 403.067, F.S., to revise general BMAP requirements. The bill:

- Requires that agricultural operations located within the associated Water Body Identification Number sign a notice of intent to implement agricultural best management practices or conduct water quality monitoring if a BMAP or alternative restoration plan has not been adopted within 90 days of the adoption of a TMDL; and
- Requires that the priority ranking for each listed project be based on nutrient load per project, project readiness, cost effectiveness, overall environmental benefit, location within the plan area, local matching funds, and water savings or quantity improvements.

The bill creates a wastewater treatment plan, which:

- Requires a local government, in cooperation with DEP, the relevant water management district, and the relevant local public and private wastewater utilities, to develop a plan to implement improvements that provide, at minimum, advanced waste treatment;
- Requires that each plan provide for construction, expansion, or upgrades necessary to achieve a TMDL, consistent with an OSTDS remediation plan;
- Clarifies that a local government that does not have a wastewater treatment plant in its jurisdiction is not required to develop a wastewater treatment plan unless the DEP determines that the creation of a plant within the jurisdiction is necessary to meet the TMDL;
- Provides that a local public or private wastewater utility that implements a waste treatment program that meets or exceeds advanced waste treatment may be deemed to comply with the requirements for a wastewater treatment plan with the approval of the DEP;
- Creates a grandfather provision for certain wastewater treatment plants that have met the requirements for a TMDL by July 1, 2019, unless and until the DEP determines that higher levels of treatment are required to meet the TMDL;
- Requires owners or operators of existing wastewater treatment plants to provide certain information for each plant with a plan to implement upgrades that meet or exceed advanced waste treatment, including:
 - The permitted capacity of the plant, in gallons per day;
 - The average nutrient concentration; and
 - The estimated average nutrient load;
- Requires local governments to submit to the DEP for approval certain information in the plan that includes:
 - The timeline of dates required for beginning construction, completing each stage of construction, and beginning operations for any improvements;
 - A detailed planning and design report setting forth the plan for construction of improvements and operations; and
 - A certification that the local government, in agreement with the owner or operator of the wastewater treatment plant, has improved the method of implementing upgrades and method of financing or funding construction and operation;
- Authorizes DEP to amend the plan and requires DEP to approve a final plan;
- Requires DEP to provide technical support to a local government upon request;
- Requires existing wastewater treatment plants to incorporate the wastewater treatment plan into its next NPDES or wastewater operating permit renewal;
- Provides that failure to meet deadlines and comply with the plan will result in a prohibition on local government participation in DEP's wastewater grant program and penalties; and
- Authorizes DEP to grant an extension of time to a local government to reach compliance with the schedule upon a showing of good cause and to reduce penalties based on expenditures for improvements and upgrades to the wastewater treatment facility.

The bill revises and expands the OSTDS remediation plans, currently required only for OFSs, to:

- Apply to all BMAPs and revise the provisions to shift primary responsibility to local governments;
- Authorize DEP to identify OSTDS remediation plan 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;
- Require a local government, in cooperation with DEP, the relevant water management district, and the relevant local public and private wastewater utilities, to develop an OSTDS remediation plan if DEP has identified OSTDSs as contributors of at least 20 percent of nonpoint source nutrient pollution or if DEP determines that remediation is necessary to achieve a TMDL;
- Identify cost-effective and financially feasible projects necessary to reduce nutrient impacts from OSTDSs;
- Require the plan to be completed and adopted as part of a BMAP no later than the first 5-year milestone assessment for the BMAP or as required for OFS;
- Require DEP to be responsible for timely approval and adoption of the plan;
- Require that each plan provide for connecting each OSTDS to a central wastewater treatment plant or replacing the current system with a new system so the nutrient load meets or exceeds current water quality standards;
- Require each plan to include water quality monitoring provisions to ensure that waterbodies within the plan area do not continue to be further degraded by OSTDSs;
- Require local governments to submit a plan to the DEP for approval which includes:
 - The timeline of dates required for beginning construction, completing each stage of construction, and mandatory upgrades of OSTDSs or any ordinances that must be adopted to implement the plan;
 - A detailed planning and design report setting forth the plan for construction of improvements to and implementation of OSTDS upgrades; and
 - A certification that the local government, in agreement with the owner/operator, has improved the method of remediation and method of financing or funding construction and operation;
- Require local governments to hold publicly noticed meetings on OSTDS plans;
- Authorize DEP to amend the plan and require DEP to approve a final plan;
- Require DEP to provide technical support to a local government upon request;
- Provide that failure to meet deadlines and comply with the plan will result in a prohibition on local government participation in DEP's wastewater grant program and penalties;
- Authorize DEP to grant an extension of time to a local government to reach compliance with the schedule upon a showing of good cause and to reduce penalties based on expenditures designed to achieve compliance with the remediation plan;
- Require DEP in developing and adopting the plan to:
 - Collect and evaluate credible scientific information on the effect of nutrients on surface waters and groundwater;
 - Work with local stakeholders to develop a public education plan to provide area residents with reliable understandable information about OSTDSs and surface and groundwater pollution.
- Authorize DEP to include in the plan, if appropriate:
 - Options for system repair, upgrade, or replacement;

- Drainfield modification;
- Addition of effective nutrient-reducing features; or
- Other actions addressing OSTDS issues.
- Require DEP to include in the plan a priority ranking for each onsite system, or group of systems, that require remediation. The priority ranking must be used to ensure the most effective, efficient use of the funding provided for onsite system remediation.
- Authorize DEP, in awarding funds, to consider:
 - Expected nutrient reduction benefit per unit cost;
 - Size and scope of project;
 - Local financial contributions to the project relative to the overall cost; and
 - Financial impact on property owners and the community.
- Authorize DEP, in awarding funds, at its discretion, totally or partially waive the consideration of the local contributions for proposed projects with an area designated as a rural area of opportunity under s. 288.0565, F.S.;⁸¹
- Require the installation, repair, modification, or upgrade of OSTDSs within the BMAP area with an OSTDS remediation plan to conform to the requirements of the remediation plan.

The bill requires local stakeholders to consider in an alternative restoration plan:

- Implementation of agricultural best management practices or monitoring for nonpoint sources, which then become enforceable upon adoption of the restoration plan;
- Implementation of OSTDS remediation plans needed to restore the water body;
- Adoption of advanced waste treatment levels or higher water quality effluent standards for wastewater treatment plants; and
- Any other pollution control mechanisms being implemented to demonstrate a reasonable assurance that existing or proposed pollution control mechanisms or programs will effectively address the impairment.

Section 8 creates s. 403.0673, F.S., to establish a grant program within the DEP. Subject to appropriation, the DEP may provide grants for projects that will individually or collectively reduce excess nutrient pollution in a BMAP or an alternative restoration plan adopted by final order that will:

- Retrofit OSTDSs;
- Construct, upgrade, or expand wastewater facilities to provide advanced waste treatment; and
- Connect OSTDSs to central sewer facilities.

The bill directs DEP to give priority for projects that subsidize the connection of OSTDSs to a wastewater treatment plant or that subsidize inspections and assessments of OSTDSs. The bill requires DEP to consider the following factors in determining priorities:

- Estimated reduction in nutrient load per project;
- Project readiness;
- Cost effectiveness of the project;
- Overall environmental benefit of a project;

⁸¹ Section 288.0656(2)(d), F.S., provides that “rural area of opportunity” means a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

- Location of a project within the plan area;
- Availability of local matching funds; and
- Projected water savings or quantity improvements associated with a project.

The bill requires 50% matching funds from local governments but authorizes DEP to waive the matching requirement for rural areas of opportunity under s. 288.0656, F.S.⁸²

The bill authorizes DEP to coordinate with water management districts to identify grant recipients. The bill requires DEP to submit an annual report on funded projects to the Governor, the President of the Senate, and the Speaker of the House of Representatives every January 1, beginning in 2020.

Section 9 creates s. 403.0771, F.S., to require a wastewater treatment facility that unlawfully discharges raw or partially treated sewage into a waterway or aquifer to provide notification to its customers within 24 hours after discovering the discharge.

The bill imposes a prohibition on local government participation in DEP's wastewater grant program, and requires the DEP to impose a daily penalty on the wastewater treatment facility until the required maintenance, repair, or improvement has been implemented to reduce or eliminate the sanitary sewage overflows, as determined by the DEP. The bill authorizes DEP to reduce penalties based on the wastewater treatment facility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewage overflows.

The bill requires DEP to maintain a publicly accessible website that includes current consent orders applicable to and reports filed by a wastewater treatment facility that has had sanitary sewer overflows.

Section 10 amends s. 403.086, F.S., to add Indian River Lagoon, effective July 1, 2024, to a list of waterbodies with a prohibition against any sanitary sewage disposal into the waterbody without providing advanced waste treatment approved by DEP.

Section 11 amends s. 403.9337, F.S., to impose a prohibition from participation in DEP's wastewater grant program and daily fines on local governments located within the watershed of a water body that is listed as impaired that fails to adopt, enact, and implement the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. In implementing the ordinance, the bill requires local governments to conduct educational campaigns, enforcement programs, and notification of property owners subject to the ordinance, and submit a report on its efforts to DEP for publication on DEP's website.

Section 12 requires DEP to revise all BMAPs that were adopted and approved by the Secretary of Environmental Protection or prepared by DEP before July 1, 2019:

- By July 1, 2021, for the Indian River Lagoon, waterbodies with a direct hydrological connection to the Indian River Lagoon, and Outstanding Florida Springs. The bill authorizes

⁸² *Id.*

DEP to grant a 6-month extension, upon a showing of good cause, to a local government on the deadlines for its wastewater treatment project plan or OSTDS remediation plan.

- Beginning July 1, 2021, for all other BMAPs. Revisions to such BMAPs must be completed by the next required 5-year milestone assessment for those revisions scheduled for on or after July 1, 2021. The bill authorizes DEP to grant a 6-month extension, upon a showing of good cause, to a local government on the deadlines for its wastewater treatment project plan or OSTDS remediation plan.

Section 13 provides a finding of important state interest.

Section 14 provides that except as otherwise expressly provided in the act, the effective date is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill requires local governments to develop and implement plans for wastewater treatment facility improvements and OSTDS improvements and connections, which may require the expenditure of funds. Article VII, section 18(a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Article VII, section 18(d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. If no exemption or exception applies, the bill may require a finding of important state interest and a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Wastewater treatment facilities may incur a negative fiscal impact due to costs associated with notifying customers of a sanitary sewage overflow. Additionally, if a wastewater treatment facility makes an unlawful discharge, it may incur penalties until it implements required maintenance, repairs, or improvements.

C. Government Sector Impact:

There may be a significant negative fiscal impact on local governments that are required to develop and implement wastewater treatment facility improvements and OSTDS improvements and connections. There may be an additional negative fiscal impact on a local government that does not comply with the requirements under the bill, leading to a moratorium on issuing building permits for new construction or an assessment of penalties.

However, there may be a positive fiscal impact on a local government that receives a grant for wastewater or OSTDS projects. There may also be a positive fiscal impact on government expenditures if the revisions to BMAPs improve water quality, resulting in decreased expenditures on water cleanup efforts.

There may be negative fiscal impacts on DEP if staff time and department resources are necessary to administer the wastewater grant program and to provide technical support to local governments that request assistance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.807, 373.811, 403.031, 403.067, 403.086, and 403.9337.

This bill creates the following sections of the Florida Statutes: 403.0616, 403.0673, and 403.0771.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on April 2, 2019:

The committee substitute:

- Removes the moratorium on local governments issuing building permits for new construction and the moratorium on DOH approval of OSTDSs.
- Prohibits local government participation in DEP's wastewater grant program for noncompliance.

CS by Environment and Natural Resources Committee on March 20, 2019:

The committee substitute:

- Deletes the type two transfer of the onsite sewage program from DOH to DEP and instead, requires DEP, in coordination with DOH, to develop a report for presentation to the Legislature which addresses the impacts of a type two transfer. If DEP is authorized to develop a memorandum of agreement with DOH describing how a type two transfer would be implemented, the report would not be required.
- Deletes language requiring the nutrient load reductions in each BMAP to exceed the total nutrient load reductions needed to meet the TMDL.
- Requires a local government that implements the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes to, as part of implementation, conduct education, enforcement, and notification, and requires the local government to submit a report on its efforts to DEP for publication on DEP's website.
- Deletes the agriculture remediation plan, and instead, if a BMAP or alternative restoration plan has not been adopted within 90 days of the adoption of a TMDL, requires that agricultural operations sign a notice of intent to implement best management practices or conduct water quality monitoring.
- Defines the terms "wastewater facilities" and "wastewater plant" for chapter 403.
- Requires DEP to establish a water quality monitoring program and encourages DEP to form public-private partnerships with entities with established monitoring equipment.
- Provides that a local public or private wastewater utility that implements a waste treatment program that meets or exceeds advanced waste treatment may be deemed to comply with the requirements for a wastewater treatment plan.
- Creates a grandfather provision for certain wastewater treatment plants that have met the requirements for a TMDL by July 1, 2019.
- Requires local governments to hold publicly noticed meetings on OSTDS plans.
- Requires OSTDS plans to include water quality monitoring provisions.
- Requires DEP to maintain a public website that includes current consent orders and reports for a wastewater treatment facility that has had sanitary sewer overflows.
- Revises the moratorium provisions in the bill to apply only to new building permits and new OSTDS permits.
- Delays the deadlines for DEP's BMAPs to July 1, 2021.
- Adds a statement of important state interest.

- Makes other technical and clarifying changes.

B. Amendments:

None.

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	.	
04/03/2019	.	
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	.	

The Committee on Community Affairs (Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete lines 195 - 759
and insert:
403.161 and may not participate in the wastewater grant program
established under s. 403.0673 until such time as the ordinance
has been adopted, enacted, and implemented. In implementing the
ordinance, a local government shall conduct educational
campaigns, enforcement programs, and mandatory notification of
property owners subject to the ordinance, and shall submit a



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11 report on its implementation efforts to the department for
12 publication on the department's website.

13 (3) If a basin management action plan or an alternative
14 restoration plan has not been adopted within 90 days after the
15 adoption of a nutrient total maximum daily load for an
16 Outstanding Florida Spring, agricultural operations located
17 within the associated Water Body Identification Number shall
18 sign a notice of intent to implement the applicable agricultural
19 best management practices or other measures adopted by the
20 Department of Agriculture and Consumer Services pursuant to s.
21 403.067(7)(c) or conduct water quality monitoring as prescribed
22 by the department or a water management district. Such
23 agricultural operations may be subject to enforcement action by
24 the department or a water management district based upon a
25 failure to comply with this subsection.

26 ~~(3) As part of a basin management action plan that includes~~
27 ~~an Outstanding Florida Spring, the department, the Department of~~
28 ~~Health, relevant local governments, and relevant local public~~
29 ~~and private wastewater utilities shall develop an onsite sewage~~
30 ~~treatment and disposal system remediation plan for a spring if~~
31 ~~the department determines onsite sewage treatment and disposal~~
32 ~~systems within a priority focus area contribute at least 20~~
33 ~~percent of nonpoint source nitrogen pollution or if the~~
34 ~~department determines remediation is necessary to achieve the~~
35 ~~total maximum daily load. The plan shall identify cost-effective~~
36 ~~and financially feasible projects necessary to reduce the~~
37 ~~nutrient impacts from onsite sewage treatment and disposal~~
38 ~~systems and shall be completed and adopted as part of the basin~~
39 ~~management action plan no later than the first 5-year milestone~~



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~~required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:~~

~~(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and~~

~~(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.~~

~~In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project,~~



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~~and the financial impact on property owners and the community.
The department may waive matching funding requirements for
proposed projects within an area designated as a rural area of
opportunity under s. 288.0656.~~

(4) The department shall provide notice to a local government of all permit applicants under s. 403.814(12) in a priority focus area of an Outstanding Florida Spring over which the local government has full or partial jurisdiction.

Section 4. Subsection (2) of section 373.811, Florida Statutes, is amended to read:

373.811 Prohibited activities within a priority focus area.—The following activities are prohibited within a priority focus area in effect for an Outstanding Florida Spring:

(2) New onsite sewage treatment and disposal systems on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance with s. 403.067(7)(e) ~~s. 373.807(3)~~.

Section 5. Subsections (22) and (23) are added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Wastewater facilities" or "wastewater treatment facilities" means any of the following: the collection and transmission system, the wastewater treatment plant, and the reuse or disposal system.

(23) "Wastewater plant" or "wastewater treatment plant"



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means any plant or other works used for the purpose of treating, stabilizing, or holding wastewater.

Section 6. Section 403.0616, Florida Statutes, is created to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities with existing, proven real-time water quality monitoring equipment and experience in deploying such equipment.

Section 7. Present paragraph (d) of subsection (7) of section 403.067, Florida Statutes, is redesignated as paragraph (f), a new paragraph (d) and paragraphs (e) and (g) are added to that subsection, paragraph (a) of that subsection is amended, and paragraph (d) is added to subsection (3) of that section, to read:

403.067 Establishment and implementation of total maximum daily loads.-

(3) ASSESSMENT.-

(d) If a basin management action plan or an alternative restoration plan has not been adopted within 90 days after the adoption of a total maximum daily load for a water body or water body segment, agricultural operations located within the associated Water Body Identification Number shall sign a notice of intent to implement the applicable agricultural best



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management practices or other measures adopted by the Department of Agriculture and Consumer Services pursuant to s. 403.067(7)(c) or conduct water quality monitoring as prescribed by the department or a water management district. Such agricultural operations may be subject to enforcement action by the department or a water management district based upon a failure to comply with this paragraph.

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

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, provide detailed information for improvement projects including descriptions and timelines for completion, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.



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2. A basin management action plan must equitably allocate, pursuant to paragraph (6) (b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). Where appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable



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extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project. The priority ranking shall be based on the estimated reduction in nutrient load per project, project readiness, cost effectiveness, overall environmental benefit, location within the plan area, local matching funds, and water savings or quantity improvements;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin



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management action plan and any amendment to such plan by
secretarial order pursuant to chapter 120 to implement the
provisions of this section.

6. The basin management action plan must include milestones
for implementation and water quality improvement, and 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 shall be conducted every 5
years, and revisions to the plan shall be made as appropriate.
Revisions to the basin management action plan shall be made by
the department in cooperation with basin stakeholders. Revisions
to the management strategies required for nonpoint sources must
follow the procedures set forth in subparagraph (c)4. Revised
basin management action plans must be adopted pursuant to
subparagraph 5.

7. In accordance with procedures adopted by rule under
paragraph (9)(c), basin management action plans, and other
pollution control programs under local, state, or federal
authority as provided in subsection (4), may allow point or
nonpoint sources that will achieve greater pollutant reductions
than required by an adopted total maximum daily load or
wasteload allocation to generate, register, and trade water
quality credits for the excess reductions to enable other
sources to achieve their allocation; however, the generation of
water quality credits does not remove the obligation of a source
or activity to meet applicable technology requirements or
adopted best management practices. Such plans must allow trading
between NPDES permittees, and trading that may or may not



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involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The provisions of the department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

(d) Wastewater treatment plan.—

1. As part of a basin management action plan, each local government, in cooperation with the department, the relevant water management district, and the relevant local public and private wastewater utilities, shall develop a plan to implement improvements that provide, at a minimum, advanced waste treatment, as defined in s. 403.086(4). The plan must provide for construction, expansion, or upgrades necessary to achieve a total maximum daily load, consistent with an onsite sewage treatment and disposal system remediation plan under paragraph (e). A local government that does not have a wastewater treatment plant in its jurisdiction is not required to develop a wastewater treatment plan unless the department determines that the creation of such a plant within the jurisdiction is necessary to meet the total maximum daily load. If advanced waste treatment standards are met or exceeded as part of a broader waste treatment program implemented by the local public or private wastewater treatment utility, such a program may be deemed to comply with the requirements of this paragraph with the approval of the department. Wastewater treatment plants that



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are directly addressed in a basin management action plan and do not meet or exceed advanced waste treatment standards but that have been determined to meet the requirements for the total maximum daily load before July 1, 2019, are grandfathered unless and until the department determines that higher levels of treatment are required to meet the total maximum daily load.

2. Each owner or operator of an existing wastewater treatment plant shall provide certain information for each plant that has a plan to implement upgrades that meet or exceed advanced waste treatment, as defined in s. 403.086(4). This information must include the following as it relates to existing conditions and estimated conditions after upgrades are implemented:

- a. The permitted capacity of the plant, in gallons per day;
- b. The average nutrient concentration; and
- c. The estimated average nutrient load.

3.a. The local government shall submit to the department for approval a detailed plan that includes:

(I) A timeline that specifies the dates by which the construction of any improvements must commence, each stage of construction must be completed, and operations must commence;

(II) A detailed planning and design report setting forth the plan for construction of improvements and operations; and

(III) A certification that the local government, in agreement with the owner or operator, has approved the method of implementing upgrades and method of financing or funding construction and operation.

b. The department may amend the plan and shall approve a final plan. The department shall provide technical support upon



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request by a local government. An existing wastewater treatment plant must also incorporate the plan into its next NPDES or wastewater operating permit renewal.

c. Each new wastewater treatment plant located within the plan area shall comply with the requirements and approved dates in the basin management action plan. Each existing wastewater treatment plant located within the plan area must be in compliance with the timeline set out in the basin management action plan to receive a renewal of its NPDES or wastewater operating permit. Upon a showing of good cause, the department may grant an extension of time to the local government to comply with the timeline.

d. If the deadlines for the initiation of construction of improvements, completion of construction, and commencement of operations which were approved pursuant to this subparagraph are not satisfied, each local government with a wastewater treatment plant that does not meet the requirements in this subparagraph may not participate in the wastewater grant program established under s. 403.0673 until such time as the plant is brought into compliance. In addition, the department shall, unless good cause is shown, assess penalties pursuant to ss. 403.121, 403.141, and 403.161 until such time as the plant is brought into compliance. The department may reduce penalties based on expenditures for improvements and upgrades to the wastewater treatment facility.

(e) Onsite sewage treatment and disposal systems.-

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

2.a. As part of a basin management action plan, each local



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government, in cooperation with the department, the Department of Health, the relevant water management district, and relevant local public and private wastewater utilities, shall develop an onsite sewage treatment and disposal system remediation plan if the department identifies onsite sewage treatment and disposal systems as contributors of at least 20 percent of nonpoint source nutrient pollution or if the department determines that remediation is necessary to achieve a total maximum daily load. In order to promote cost-effective remediation, the department may identify one or more onsite sewage treatment and disposal system priority focus areas. The department shall identify these areas by considering soil conditions; groundwater or surface water travel time; proximity to surface waters, including predominantly marine waters as defined by department 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 necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems. The plan shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone assessment identified in subparagraph (a)6., for basin management action plans generally, or as required in s. 373.807(1)(b)8., for Outstanding Florida Springs. Before adopting the plan, the local government shall hold one or more publicly noticed meetings to receive input on the plan from the general public. The department is responsible for timely approval and adoption of the plan. For basin management action plans not governed by part VIII of chapter 373, an onsite sewage treatment and disposal system priority



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focus area means the area or areas of a basin where the groundwater is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an impaired water body, as determined by the department in consultation with the appropriate water management districts and delineated in a basin management action plan.

b.(I) Each local government within the plan area, or the local government's designee, shall prepare a plan, by the first 5-year milestone assessment required under subparagraph (a)6., for basin management action plans generally, or as required in s. 373.807(1)(b)8. for Outstanding Florida Springs. Within its jurisdiction, the local government plan must provide for either connecting each onsite sewage treatment and disposal system to a central wastewater treatment plant or replacing the current system with a new system within the onsite sewage treatment and disposal system priority focus area so that a nutrient load from onsite sewage treatment and disposal systems meets or exceeds applicable water quality standards. The plan must include water quality monitoring provisions to ensure that waterbodies within the plan area do not continue to be further degraded by onsite sewage treatment and disposal systems. The local government shall submit to the department for approval, a detailed plan, which includes:

(A) A timeline that specifies the dates by which the construction of any improvements must commence, each stage of construction must be completed, and mandatory upgrades of onsite sewage treatment disposal systems within the plan area must be implemented or any ordinances that must be adopted to implement the plan;



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(B) A detailed planning and design report setting forth the plan for construction of improvements to and implementation of onsite sewage treatment and disposal system upgrades;

(C) A certification that the local government, in agreement with the owner or operator, has approved the method of remediation and method of financing or funding construction and operation.

(II) The department may amend the plan and shall approve a final plan. The department shall provide technical support upon request by a local government. Upon a showing of good cause, the department may grant an extension of time to reach compliance with the schedule.

(III) If the deadlines in sub-sub-sub-subparagraph (I) (A) are not satisfied, the local government may not participate in the wastewater grant program established under s. 403.0673 until the actions in the remediation plan have been completed. In addition, the department shall, unless good cause is shown, assess penalties pursuant to ss. 403.121, 403.141, and 403.161 until the actions in the remediation plan have been completed. The department may reduce penalties based on expenditures designed to achieve compliance with the remediation plan.

c. In developing and adopting the plan, the department shall:

(I) Collect and evaluate credible scientific information on the effect of nutrients on surface waters and groundwater;

(II) 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;



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(III) In addition to sub-subparagraph 2.b., the department may include in the plan, if appropriate, options for system repair, upgrade, or replacement; drainfield modification; the addition of effective nutrient-reducing features; or other actions addressing onsite sewage treatment and disposal system issues. The department shall include in the plan a priority ranking for each onsite system, or group of systems, that requires remediation. The priority ranking shall be used to ensure the most effective, efficient use of the funding provided for onsite system remediation. In awarding any such funds, the department may consider expected nutrient reduction benefit per unit cost, the size and scope of the project, local financial contribution to the project relative to the overall cost, and the financial impact on property owners and the community. For the purpose of awarding funds, the department may, at its discretion, totally or partially waive this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656; and

(IV) The installation, repair, modification, or upgrade of onsite sewage treatment and disposal systems within the boundaries of a basin management action plan with an onsite sewage treatment and disposal system remediation plan must conform to the requirements of the remediation plan.

(g) Alternative restoration plan.—

1. As part of its alternative restoration plan for a water body, the local stakeholders proposing the plan must consider:

a. The implementation of agricultural best management practices or monitoring for nonpoint sources of pollution in accordance with paragraph (c);



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b. The implementation of an onsite sewage treatment and disposal system remediation plan where such remediation is necessary to restore the water body in accordance with paragraph (e); and

c. The adoption of advanced waste treatment levels or higher water quality effluent standards for wastewater treatment plants.

2. In addition, the restoration plan must include any other pollution control mechanisms that are being implemented to demonstrate a reasonable assurance that existing or proposed pollution control mechanisms or programs will effectively address the impairment. Upon adoption of such a restoration plan, the requirement that best management practices or monitoring be conducted within the watershed impacting the water body is enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161.

Section 8. Section 403.0673, Florida Statutes, is created to read:

403.0673 Wastewater grant program.—A wastewater grant program is established within the Department of Environmental Protection.

(1) Subject to appropriation, the department may provide grants for projects that will individually or collectively reduce excess nutrient pollution within a basin management action plan or an alternative restoration plan adopted by final order for all of the following:

(a) Projects to retrofit onsite sewage treatment and disposal systems.

(b) Projects to construct, upgrade, or expand facilities to



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provide advanced waste treatment, as defined in ss. 403.086(4).

(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

(2) In allocating such funds, priority must be given for projects that subsidize the connection of onsite sewage treatment and disposal systems to a wastewater treatment plant or that subsidize inspections and assessments of onsite sewage treatment and disposal systems. In determining priorities, the department shall consider the estimated reduction in nutrient load per project; project readiness; cost effectiveness of the project; overall environmental benefit of a project; the location of a project within the plan area; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2020, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 9. Section 403.0771, Florida Statutes, is created



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to read:

403.0771 Sewage spill notification; moratorium.—

(1) In addition to the public notification requirements of s. 403.077, a wastewater treatment facility that unlawfully discharges raw or partially treated sewage into any waterway or aquifer must, within 24 hours after discovering the discharge, notify its customers that the discharge has occurred.

(2) If a wastewater treatment facility owned by a local government unlawfully discharges raw or partially treated sewage into any waterway or aquifer, the local government may not participate in the wastewater grant program established under s. 403.0673 until any required maintenance, repair, or improvement has been implemented to reduce or eliminate sanitary sewage overflows, as determined by the department. In addition, the department shall assess a daily penalty pursuant to ss. 403.121, 403.141, and 403.161 against a public or private wastewater facility that unlawfully discharges raw or partially treated sewage into any waterway or aquifer until the required maintenance, repair, or improvement has been implemented. The department may reduce a penalty based on the wastewater treatment facility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewage overflows.

(3) The department shall maintain a publicly accessible website that includes any current consent orders applicable to a wastewater treatment facility entered into as a result of sanitary sewer overflows, as well as any reports filed by the facility in accordance with open consent orders.

Section 10. Effective July 1, 2024, paragraph (c) of



781502

subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c) Notwithstanding any other provisions of this chapter or chapter 373, facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph shall not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

Section 11. Present subsection (4) of section 403.9337, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.—

(4) A local government that fails to adopt, enact, and implement an ordinance required by subsection (2) by January 1, 2020, is subject to a daily fine as provided in ss. 403.121, 403.141, and 403.161 and may not participate in the wastewater



781502

grant program established under s. 403.0673 until the ordinance
has been adopted,

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

 Delete lines 13 - 68
and insert:
 prohibiting a local government from participating in
 the wastewater grant program under certain
 circumstances; providing penalties; requiring certain
 agricultural operations that fail to adopt a basin
 management action plan or alternative restoration plan
 within a specified timeframe to sign a notice of
 intent to implement certain practices, measures, or
 monitoring; amending s. 373.811, F.S.; conforming a
 cross-reference; amending s. 403.031, F.S.; defining
 terms; creating s. 403.0616, F.S.; requiring the
 department, subject to appropriation, to establish a
 real-time water quality monitoring program;
 encouraging the formation of public-private
 partnerships; amending s. 403.067, F.S.; requiring
 certain agricultural operations that fail to adopt a
 basin management action plan or alternative
 restoration plan within a specified timeframe to sign
 a notice of intent to implement certain practices,
 measures, or monitoring; revising requirements for a
 basin management action plan; requiring each local
 government to develop a wastewater treatment plan that
 meets certain requirements; prohibiting a local



781502

government that does not meet certain requirements relating to wastewater treatment plant project plans or onsite sewage treatment and disposal system remediation plans from participating in the wastewater grant program within a specified timeframe; providing penalties; defining the term "onsite sewage treatment and disposal system"; requiring a local government, in cooperation with specified entities, to develop an onsite sewage treatment and disposal system remediation plan as part of the basin management action plan under certain circumstances; providing requirements for such plan; providing requirements for a restoration plan for certain water bodies; creating s. 403.0673, F.S.; establishing a wastewater grant program within the Department of Environmental Protection; authorizing the department to distribute appropriated funds for certain projects; providing requirements for the distribution; requiring the department to coordinate with each water management district to identify grant recipients; requiring an annual report to the Governor and the Legislature by a specified date; creating s. 403.0771, F.S.; requiring a wastewater treatment plant to notify customers of unlawful discharges of raw or partially treated sewage into any waterway or aquifer within a specified timeframe; prohibiting a local government that owns such a plant from participating in the wastewater grant program within a specified timeframe; providing penalties;

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 4-2-19

Bill Number (if applicable) 1758

Amendment Barcode (if applicable) _____

Topic Water Quality

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place

City Tallahassee State FL Zip 32317

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Home Builders 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.

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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)

Meeting Date

4/12/19

Bill Number (if applicable)

SB 1258

Amendment Barcode (if applicable)

Topic

Alaska Recaltery

Name

Randa M. Smith

Job Title

Member

Address

1350 Hwy 40 West

Phone

352-229-0444

Street

City

Jacksonville

State

FL

Zip

32219

Email

randasmith@flsenate.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

Bill Number (if applicable)

4/2/19

1758

Topic

Alateros

Amendment Barcode (if applicable)

Name

Dan Peterson

Job Title

President

Address

PO Box 1875

Phone

407-258-2491

Street

Minneapolis

City

State

FL

34755

Zip

Email danpeterson@cpwfl.org

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Coalition for Property Rights

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.

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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)

Meeting Date 4/11/19

Bill Number (if applicable) 1758

Topic Clean Waterway Act

Amendment Barcode (if applicable) _____

Name Ryan Smart

Job Title Executive Director

Address 204 Tallwood Rd

Phone 561-358-7191

City Jax Beach State FL Zip 32050

Email smart42@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Springs Council

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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Meeting Date

4.2

Bill Number (if applicable)

1758

Topic SB 1758

Amendment Barcode (if applicable)

Name KIRK MANTAY

Job Title CHAIRMAN, AMERICAN WOMEN SECURITY PROJECT

Address

Phone

Street

Email

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

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.

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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)

Meeting Date 4/21/19

Bill Number (if applicable) 1758

Topic Water Quality Improvements

Amendment Barcode (if applicable) _____

Name Danielle Irwin

Job Title Volunteer

Address 3185 Ferns Glen Dr.

Phone 904/537-5213

Street Tallahassee State FL Zip 32309

Email danielle.h.irwin@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

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)

Meeting Date 2 April 2019

Bill Number (if applicable) 1759

Topic Clean Waters Act

Amendment Barcode (if applicable) _____

Name Dr. Peter Pavile

Job Title Senior Scientist

Address 1570 Anglers Drive

Phone _____

Street

Palm Bay

FL

32905

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Water Security Project

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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2 April 2019
Meeting Date

1758
Bill Number (if applicable)

Topic Clean Water Bill

Amendment Barcode (if applicable)

Name Terry Gibson

Job Title Gov. Affairs Director / American Water security Project

Address ~~44~~ 4394 NE Skyline Dr.

Phone 772-285-7683

Street

Jensen Beach FL 34957

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Water Security Project

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.

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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)

Meeting Date 2 April 19

Bill Number (if applicable) 1758

Topic Clean Water Act

Amendment Barcode (if applicable) _____

Name Dr. Nicole Kirchhoff

Job Title Scientist, American Water Security Project + CEO Live Advantage Bait

Address 2054 Palmetto Rd.

Phone _____

Street

City West Palm Beach State FL Zip 33458

Email NKirchhoff@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Water Security Project

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date 4/24/19

Bill Number (if applicable) 1758

Topic Water Quality Improvements

Amendment Barcode (if applicable) _____

Name Jonathan Weber

Job Title Deputy Director

Address 1700 N. Monroe St.

Phone 954-593-4449

City Tallahassee State FL Zip 32303

Email jweber@FCVOTESFL.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ 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: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-2-19
Meeting Date

1758
Bill Number (if applicable)
781502
Amendment Barcode (if applicable)

Topic

Name DAVID CULLEN

Job Title

Address 1674 Hwy. 9 #295

Street

City

State

Zip

SAFESIDE

FL

34243

Email cullena@saferide.com

Phone 941.323.2404

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SAFESIDE 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.

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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)

Meeting Date 4/2/19

1758

Bill Number (if applicable)

781562

Amendment Barcode (if applicable)

Topic Water Quality

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222 9684

Street

Tallahassee FL

32302

Email rohara@flcourts.gov

City

State

Zip

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 meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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By the Committee on Environment and Natural Resources; and
Senators Mayfield, Simmons, and Harrell

592-03301A-19

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1 A bill to be entitled
2 An act relating to water quality improvements;
3 providing a short title; requiring the Department of
4 Environmental Protection, in coordination with the
5 Department of Health, to develop a report to be
6 submitted to the Legislature by a specified date on
7 the impacts of transferring the onsite sewage program
8 of the Department of Health to the Department of
9 Environmental Protection by a type two transfer;
10 providing an exception; amending s. 373.807, F.S.;
11 revising the requirements for a basin management
12 action plan for an Outstanding Florida Spring;
13 prohibiting a local government from approving building
14 permits within the plan area under certain
15 circumstances; providing penalties; requiring certain
16 agricultural operations that fail to adopt a basin
17 management action plan or alternative restoration plan
18 within a specified timeframe to sign a notice of
19 intent to implement certain practices, measures, or
20 monitoring; amending s. 373.811, F.S.; conforming a
21 cross-reference; amending s. 403.031, F.S.; defining
22 terms; creating s. 403.0616, F.S.; requiring the
23 department, subject to appropriation, to establish a
24 real-time water quality monitoring program;
25 encouraging the formation of public-private
26 partnerships; amending s. 403.067, F.S.; requiring
27 certain agricultural operations that fail to adopt a
28 basin management action plan or alternative
29 restoration plan within a specified timeframe to sign

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 a notice of intent to implement certain practices,
31 measures, or monitoring; revising requirements for a
32 basin management action plan; requiring each local
33 government to develop a wastewater treatment plan that
34 meets certain requirements; prohibiting a local
35 government that does not meet certain requirements
36 relating to wastewater treatment plant project plans
37 or onsite sewage treatment and disposal system
38 remediation plans from approving any building permits
39 within a specified timeframe; prohibiting the
40 Department of Health from approving any new onsite
41 sewage treatment and disposal system within such an
42 area for a specified timeframe; providing penalties;
43 defining the term "onsite sewage treatment and
44 disposal system"; requiring a local government, in
45 cooperation with specified entities, to develop an
46 onsite sewage treatment and disposal system
47 remediation plan as part of the basin management
48 action plan under certain circumstances; providing
49 requirements for such plan; providing requirements for
50 a restoration plan for certain water bodies; creating
51 s. 403.0673, F.S.; establishing a wastewater grant
52 program within the Department of Environmental
53 Protection; authorizing the department to distribute
54 appropriated funds for certain projects; providing
55 requirements for the distribution; requiring the
56 department to coordinate with each water management
57 district to identify grant recipients; requiring an
58 annual report to the Governor and the Legislature by a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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specified date; creating s. 403.0771, F.S.; requiring a wastewater treatment plant to notify customers of unlawful discharges of raw or partially treated sewage into any waterway or aquifer within a specified timeframe; prohibiting a local government that owns such a plant from approving any building permits within a specified timeframe; prohibiting the Department of Health from approving any new onsite sewage treatment and disposal system within such an area for a specified timeframe; providing penalties; requiring the department to maintain a publicly accessible website that contains certain information relating to wastewater treatment facilities; amending s. 403.086, F.S.; prohibiting facilities for sanitary sewage disposal from disposing of any waste in the Indian River Lagoon without first providing advanced waste treatment; amending s. 403.9337, F.S.; providing penalties for a local government that fails to adopt, enact, and implement a specified ordinance by a specified date; requiring the Department of Environmental Protection to revise the basin management action plan for the Indian River Lagoon and other specified basin management action plans by a specified date; authorizing the department to grant an extension to a local government upon a showing of good cause; providing a declaration of important state interest; providing effective dates.

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

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Section 1. This act may be cited as the "Clean Waterways Act."

Section 2. The Department of Environmental Protection, in coordination with the Department of Health, shall develop a report for presentation to the Legislature by July 1, 2020, which addresses the impacts of a type two transfer of the Department of Health's onsite sewage program to the Department of Environmental Protection for the regulation of onsite sewage treatment and disposal systems. The report must include revisions to state law, including budgetary changes, which would need to be addressed to complete the type two transfer. If the Department of Environmental Protection is authorized to develop a memorandum of agreement with the Department of Health describing how the type two transfer would be implemented if the Legislature authorized such a transfer, this report is not required.

Section 3. Section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)(a) Concurrent with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin

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management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted before July 1, 2016, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2016. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as contributors of at least 20 percent of nonpoint source nutrient ~~nitrogen~~ pollution or if the department determines remediation is necessary to achieve the total maximum daily load, the basin management action plan shall include an onsite sewage treatment and disposal system remediation plan pursuant to s. 403.067(7)(e) ~~subsection (3)~~ for those systems identified as requiring remediation.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 2 years after its initiation and must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;

2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;

3. A priority rank for each listed project. The priority ranking shall be based on the estimated reduction in nutrient load per project, project readiness, cost effectiveness, overall environmental benefit, location within the plan area, local matching funds, and water savings or quantity improvements;

4. For each listed project, a planning level cost estimate, and the estimated date of completion, and a plan submitted by

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each local government within the plan area and approved by the department for each wastewater treatment plant project as specified in s. 403.067(7)(d) and onsite sewage treatment and disposal system remediation plan as specified in s. 403.067(7)(e). Each plan must include deadlines and is subject to penalties required under s. 403.067;

5. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project;

6. An estimate of each listed project's nutrient load reduction;

7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; and

8. An implementation plan designed with a target to achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan.

The department shall develop a schedule establishing 5-year, 10-year, and 15-year targets for achieving the nutrient total maximum daily load. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120.

(c) For a basin management action plan adopted before July 1, 2016, which addresses an Outstanding Florida Spring, the

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department or the department in conjunction with a water management district must revise the plan if necessary to comply with this section by July 1, 2018.

(d) A local government may apply to the department for a single extension of up to 5 years for any project in an adopted basin management action plan. A local government in a rural area of opportunity, as defined in s. 288.0656, may apply for a single extension of up to 10 years for such a project. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public.

(2) By July 1, ~~2020~~ 2017, each local government, as defined in s. 373.802(2), that has not adopted an ordinance pursuant to s. 403.9337, shall develop, enact, and implement an ordinance pursuant to that section. It is the intent of the Legislature that ordinances required to be adopted under this subsection reflect the latest scientific information, advancements, and technological improvements in the industry. A local government that fails to adopt, enact, and implement this ordinance is subject to a daily fine as provided in ss. 403.121, 403.141, and 403.161 and may not approve any building permit for new construction within the plan area until such time as the ordinance has been adopted, enacted, and implemented. In implementing the ordinance, a local government shall conduct educational campaigns, enforcement programs, and mandatory notification of property owners subject to the ordinance, and shall submit a report on its implementation efforts to the department for publication on the department's website.

(3) If a basin management action plan or an alternative

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restoration plan has not been adopted within 90 days after the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, agricultural operations located within the associated Water Body Identification Number shall sign a notice of intent to implement the applicable agricultural best management practices or other measures adopted by the Department of Agriculture and Consumer Services pursuant to s. 403.067(7)(c) or conduct water quality monitoring as prescribed by the department or a water management district. Such agricultural operations may be subject to enforcement action by the department or a water management district based upon a failure to comply with this subsection.

~~(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, the Department of Health, relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:~~

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~~(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and~~

~~(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.~~

~~In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of~~

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~~opportunity under s. 288.0656.~~

(4) The department shall provide notice to a local government of all permit applicants under s. 403.814(12) in a priority focus area of an Outstanding Florida Spring over which the local government has full or partial jurisdiction.

Section 4. Subsection (2) of section 373.811, Florida Statutes, is amended to read:

373.811 Prohibited activities within a priority focus area.—The following activities are prohibited within a priority focus area in effect for an Outstanding Florida Spring:

(2) New onsite sewage treatment and disposal systems on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance with s. 403.067(7)(e) ~~s. 373.807(3)~~.

Section 5. Subsections (22) and (23) are added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Wastewater facilities" or "wastewater treatment facilities" means any of the following: the collection and transmission system, the wastewater treatment plant, and the reuse or disposal system.

(23) "Wastewater plant" or "wastewater treatment plant" means any plant or other works used for the purpose of treating, stabilizing, or holding wastewater.

Section 6. Section 403.0616, Florida Statutes, is created

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291 to read:

292 403.0616 Real-time water quality monitoring program.-

293 (1) Subject to appropriation, the department shall
 294 establish a real-time water quality monitoring program to assist
 295 in the restoration, preservation, and enhancement of impaired
 296 waterbodies and coastal resources.

297 (2) In order to expedite the creation and implementation of
 298 the program, the department is encouraged to form public-private
 299 partnerships with established scientific entities with existing,
 300 proven real-time water quality monitoring equipment and
 301 experience in deploying such equipment.

302 Section 7. Present paragraph (d) of subsection (7) of
 303 section 403.067, Florida Statutes, is redesignated as paragraph
 304 (f), a new paragraph (d) and paragraphs (e) and (g) are added to
 305 that subsection, paragraph (a) of that subsection is amended,
 306 and paragraph (d) is added to subsection (3) of that section, to
 307 read:

308 403.067 Establishment and implementation of total maximum
 309 daily loads.-

310 (3) ASSESSMENT.-

311 (d) If a basin management action plan or an alternative
 312 restoration plan has not been adopted within 90 days after the
 313 adoption of a total maximum daily load for a water body or water
 314 body segment, agricultural operations located within the
 315 associated Water Body Identification Number shall sign a notice
 316 of intent to implement the applicable agricultural best
 317 management practices or other measures adopted by the Department
 318 of Agriculture and Consumer Services pursuant to s.
 319 403.067(7)(c) or conduct water quality monitoring as prescribed

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320 by the department or a water management district. Such
 321 agricultural operations may be subject to enforcement action by
 322 the department or a water management district based upon a
 323 failure to comply with this paragraph.

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

326 (a) Basin management action plans.-

327 1. In developing and implementing the total maximum daily
 328 load for a water body, the department, or the department in
 329 conjunction with a water management district, may develop a
 330 basin management action plan that addresses some or all of the
 331 watersheds and basins tributary to the water body. Such plan
 332 must integrate the appropriate management strategies available
 333 to the state through existing water quality protection programs
 334 to achieve the total maximum daily loads and may provide for
 335 phased implementation of these management strategies to promote
 336 timely, cost-effective actions as provided for in s. 403.151.
 337 The plan must establish a schedule implementing the management
 338 strategies, provide detailed information for improvement
 339 projects including descriptions and timelines for completion,
 340 establish a basis for evaluating the plan's effectiveness, and
 341 identify feasible funding strategies for implementing the plan's
 342 management strategies. The management strategies may include
 343 regional treatment systems or other public works, where
 344 appropriate, and voluntary trading of water quality credits to
 345 achieve the needed pollutant load reductions.

346 2. A basin management action plan must equitably allocate,
 347 pursuant to paragraph (6)(b), pollutant reductions to individual
 348 basins, as a whole to all basins, or to each identified point

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source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). Where appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15

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days before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project. The priority ranking shall be based on the estimated reduction in nutrient load per project, project readiness, cost effectiveness, overall environmental benefit, location within the plan area, local matching funds, and water savings or quantity improvements;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement the provisions of this section.

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6. The basin management action plan must include milestones for implementation and water quality improvement, and 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 shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain

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department authorization for the generation and sale of credits.

8. The provisions of the department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

(d) Wastewater treatment plan.-

1. As part of a basin management action plan, each local government, in cooperation with the department, the relevant water management district, and the relevant local public and private wastewater utilities, shall develop a plan to implement improvements that provide, at a minimum, advanced waste treatment, as defined in s. 403.086(4). The plan must provide for construction, expansion, or upgrades necessary to achieve a total maximum daily load, consistent with an onsite sewage treatment and disposal system remediation plan under paragraph (e). A local government that does not have a wastewater treatment plant in its jurisdiction is not required to develop a wastewater treatment plan unless the department determines that the creation of such a plant within the jurisdiction is necessary to meet the total maximum daily load. If advanced waste treatment standards are met or exceeded as part of a broader waste treatment program implemented by the local public or private wastewater treatment utility, such a program may be deemed to comply with the requirements of this paragraph with the approval of the department. Wastewater treatment plants that are directly addressed in a basin management action plan and do not meet or exceed advanced waste treatment standards but that have been determined to meet the requirements for the total

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maximum daily load before July 1, 2019, are grandfathered unless and until the department determines that higher levels of treatment are required to meet the total maximum daily load.

2. Each owner or operator of an existing wastewater treatment plant shall provide certain information for each plant that has a plan to implement upgrades that meet or exceed advanced waste treatment, as defined in s. 403.086(4). This information must include the following as it relates to existing conditions and estimated conditions after upgrades are implemented:

- a. The permitted capacity of the plant, in gallons per day;
- b. The average nutrient concentration; and
- c. The estimated average nutrient load.

3.a. The local government shall submit to the department for approval a detailed plan that includes:

(I) A timeline that specifies the dates by which the construction of any improvements must commence, each stage of construction must be completed, and operations must commence;

(II) A detailed planning and design report setting forth the plan for construction of improvements and operations; and

(III) A certification that the local government, in agreement with the owner or operator, has approved the method of implementing upgrades and method of financing or funding construction and operation.

b. The department may amend the plan and shall approve a final plan. The department shall provide technical support upon request by a local government. An existing wastewater treatment plant must also incorporate the plan into its next NPDES or wastewater operating permit renewal.

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c. Each new wastewater treatment plant located within the plan area shall comply with the requirements and approved dates in the basin management action plan. Each existing wastewater treatment plant located within the plan area must be in compliance with the timeline set out in the basin management action plan to receive a renewal of its NPDES or wastewater operating permit. Upon a showing of good cause, the department may grant an extension of time to the local government to comply with the timeline.

d. If the deadlines for the initiation of construction of improvements, completion of construction, and commencement of operations which were approved pursuant to this subparagraph are not satisfied, each local government with a wastewater treatment plant that does not meet the requirements in this subparagraph may not approve any building permits for new construction within its jurisdiction, and the Department of Health may not approve any new onsite sewage treatment and disposal systems within the local government jurisdiction where the wastewater treatment plant is located until such time as the plant is brought into compliance. In addition, the department shall, unless good cause is shown, assess penalties pursuant to ss. 403.121, 403.141, and 403.161 until such time as the plant is brought into compliance. The department may reduce penalties based on expenditures for improvements and upgrades to the wastewater treatment facility.

(e) Onsite sewage treatment and disposal systems.—

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

2.a. As part of a basin management action plan, each local

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523 government, in cooperation with the department, the Department
 524 of Health, the relevant water management district, and relevant
 525 local public and private wastewater utilities, shall develop an
 526 onsite sewage treatment and disposal system remediation plan if
 527 the department identifies onsite sewage treatment and disposal
 528 systems as contributors of at least 20 percent of nonpoint
 529 source nutrient pollution or if the department determines that
 530 remediation is necessary to achieve a total maximum daily load.
 531 In order to promote cost-effective remediation, the department
 532 may identify one or more onsite sewage treatment and disposal
 533 system priority focus areas. The department shall identify these
 534 areas by considering soil conditions; groundwater or surface
 535 water travel time; proximity to surface waters, including
 536 predominantly marine waters as defined by department rule;
 537 hydrogeology; onsite system density; nutrient load; and other
 538 factors that may lead to water quality degradation. The
 539 remediation plan must identify cost-effective and financially
 540 feasible projects necessary to reduce the nutrient impacts from
 541 onsite sewage treatment and disposal systems. The plan shall be
 542 completed and adopted as part of the basin management action plan
 543 no later than the first 5-year milestone assessment identified in
 544 subparagraph (a)6., for basin management action plans generally,
 545 or as required in s. 373.807(1)(b)8., for Outstanding Florida
 546 Springs. Before adopting the plan, the local government shall
 547 hold one or more publicly noticed meetings to receive input on
 548 the plan from the general public. The department is responsible
 549 for timely approval and adoption of the plan. For basin
 550 management action plans not governed by part VIII of chapter
 551 373, an onsite sewage treatment and disposal system priority

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552 focus area means the area or areas of a basin where the
 553 groundwater is generally most vulnerable to pollutant inputs
 554 where there is a known connectivity between groundwater pathways
 555 and an impaired water body, as determined by the department in
 556 consultation with the appropriate water management districts and
 557 delineated in a basin management action plan.
 558 b.(I) Each local government within the plan area, or the
 559 local government's designee, shall prepare a plan, by the first
 560 5-year milestone assessment required under subparagraph (a)6.,
 561 for basin management action plans generally, or as required in
 562 s. 373.807(1)(b)8. for Outstanding Florida Springs. Within its
 563 jurisdiction, the local government plan must provide for either
 564 connecting each onsite sewage treatment and disposal system to a
 565 central wastewater treatment plant or replacing the current
 566 system with a new system within the onsite sewage treatment and
 567 disposal system priority focus area so that a nutrient load from
 568 onsite sewage treatment and disposal systems meets or exceeds
 569 applicable water quality standards. The plan must include water
 570 quality monitoring provisions to ensure that waterbodies within
 571 the plan area do not continue to be further degraded by onsite
 572 sewage treatment and disposal systems. The local government
 573 shall submit to the department for approval, a detailed plan,
 574 which includes:
 575 (A) A timeline that specifies the dates by which the
 576 construction of any improvements must commence, each stage of
 577 construction must be completed, and mandatory upgrades of onsite
 578 sewage treatment disposal systems within the plan area must be
 579 implemented or any ordinances that must be adopted to implement
 580 the plan;

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581 (B) A detailed planning and design report setting forth the
 582 plan for construction of improvements to and implementation of
 583 onsite sewage treatment and disposal system upgrades;

584 (C) A certification that the local government, in agreement
 585 with the owner or operator, has approved the method of
 586 remediation and method of financing or funding construction and
 587 operation.

588 (II) The department may amend the plan and shall approve a
 589 final plan. The department shall provide technical support upon
 590 request by a local government. Upon a showing of good cause, the
 591 department may grant an extension of time to reach compliance
 592 with the schedule.

593 (III) If the deadlines in sub-sub-sub-subparagraph (I) (A)
 594 are not satisfied, the local government may not approve any
 595 building permits for new construction within the plan area, and
 596 the Department of Health may not approve any new onsite sewage
 597 treatment and disposal system within the plan area until the
 598 actions in the remediation plan have been completed. In
 599 addition, the department shall, unless good cause is shown,
 600 assess penalties pursuant to ss. 403.121, 403.141, and 403.161
 601 until the actions in the remediation plan have been completed.
 602 The department may reduce penalties based on expenditures
 603 designed to achieve compliance with the remediation plan.

604 c. In developing and adopting the plan, the department
 605 shall:

606 (I) Collect and evaluate credible scientific information on
 607 the effect of nutrients on surface waters and groundwater;

608 (II) Work with local stakeholders to develop a public
 609 education plan to provide area residents with reliable,

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610 understandable information about onsite sewage treatment and
 611 disposal systems and surface and groundwater pollution;

612 (III) In addition to sub-subparagraph 2.b., the department
 613 may include in the plan, if appropriate, options for system
 614 repair, upgrade, or replacement; drainfield modification; the
 615 addition of effective nutrient-reducing features; or other
 616 actions addressing onsite sewage treatment and disposal system
 617 issues. The department shall include in the plan a priority
 618 ranking for each onsite system, or group of systems, that
 619 requires remediation. The priority ranking shall be used to
 620 ensure the most effective, efficient use of the funding provided
 621 for onsite system remediation. In awarding any such funds, the
 622 department may consider expected nutrient reduction benefit per
 623 unit cost, the size and scope of the project, local financial
 624 contribution to the project relative to the overall cost, and the
 625 financial impact on property owners and the community. For the
 626 purpose of awarding funds, the department may, at its discretion,
 627 totally or partially waive this consideration of the local
 628 contribution for proposed projects within an area designated as a
 629 rural area of opportunity under s. 288.0656; and

630 (IV) The installation, repair, modification, or upgrade of
 631 onsite sewage treatment and disposal systems within the
 632 boundaries of a basin management action plan with an onsite
 633 sewage treatment and disposal system remediation plan must
 634 conform to the requirements of the remediation plan.

635 (g) Alternative restoration plan.—

636 1. As part of its alternative restoration plan for a water
 637 body, the local stakeholders proposing the plan must consider:

638 a. The implementation of agricultural best management

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practices or monitoring for nonpoint sources of pollution in accordance with paragraph (c);

b. The implementation of an onsite sewage treatment and disposal system remediation plan where such remediation is necessary to restore the water body in accordance with paragraph (e); and

c. The adoption of advanced waste treatment levels or higher water quality effluent standards for wastewater treatment plants.

2. In addition, the restoration plan must include any other pollution control mechanisms that are being implemented to demonstrate a reasonable assurance that existing or proposed pollution control mechanisms or programs will effectively address the impairment. Upon adoption of such a restoration plan, the requirement that best management practices or monitoring be conducted within the watershed impacting the water body is enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161.

Section 8. Section 403.0673, Florida Statutes, is created to read:

403.0673 Wastewater grant program.—A wastewater grant program is established within the Department of Environmental Protection.

(1) Subject to appropriation, the department may provide grants for projects that will individually or collectively reduce excess nutrient pollution within a basin management action plan or an alternative restoration plan adopted by final order for all of the following:

(a) Projects to retrofit onsite sewage treatment and

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disposal systems.

(b) Projects to construct, upgrade, or expand facilities to provide advanced waste treatment, as defined in ss. 403.086(4).

(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

(2) In allocating such funds, priority must be given for projects that subsidize the connection of onsite sewage treatment and disposal systems to a wastewater treatment plant or that subsidize inspections and assessments of onsite sewage treatment and disposal systems. In determining priorities, the department shall consider the estimated reduction in nutrient load per project; project readiness; cost effectiveness of the project; overall environmental benefit of a project; the location of a project within the plan area; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2020, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of

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Representatives.

Section 9. Section 403.0771, Florida Statutes, is created to read:

403.0771 Sewage spill notification; moratorium.—

(1) In addition to the public notification requirements of s. 403.077, a wastewater treatment facility that unlawfully discharges raw or partially treated sewage into any waterway or aquifer must, within 24 hours after discovering the discharge, notify its customers that the discharge has occurred.

(2) If a wastewater treatment facility owned by a local government unlawfully discharges raw or partially treated sewage into any waterway or aquifer, the local government may not approve any building permits for new construction and the Department of Health may not approve any new onsite sewage treatment and disposal system in the local government's jurisdiction until any required maintenance, repair, or improvement has been implemented to reduce or eliminate sanitary sewage overflows, as determined by the department. In addition, the department shall assess a daily penalty pursuant to ss. 403.121, 403.141, and 403.161 against a public or private wastewater facility that unlawfully discharges raw or partially treated sewage into any waterway or aquifer until the required maintenance, repair, or improvement has been implemented. The department may reduce a penalty based on the wastewater treatment facility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewage overflows.

(3) The department shall maintain a publicly accessible website that includes any current consent orders applicable to a

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wastewater treatment facility entered into as a result of sanitary sewer overflows, as well as any reports filed by the facility in accordance with open consent orders.

Section 10. Effective July 1, 2024, paragraph (c) of subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c) Notwithstanding any other provisions of this chapter or chapter 373, facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph shall not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

Section 11. Present subsection (4) of section 403.9337, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.—

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(4) A local government that fails to adopt, enact, and implement an ordinance required by subsection (2) by January 1, 2020, is subject to a daily fine as provided in ss. 403.121, 403.141, and 403.161 and may not approve any building permits for new construction until the ordinance has been adopted, enacted, and implemented. In implementing the ordinance, a local government shall conduct educational campaigns, enforcement programs, and mandatory notification of property owners subject to the ordinance, and shall submit a report on its efforts to the department for publication on the department's website.

Section 12. (1) The Department of Environmental Protection shall revise the basin management action plans for the Indian River Lagoon, basin management action plans for waterbodies with a direct hydrological connection to the Indian River Lagoon, and the basin management action plans that were adopted pursuant to s. 373.807, Florida Statutes, and approved by the Secretary of Environmental Protection or prepared by the department before July 1, 2019, to conform existing plans to changes made by this act. Revisions to such basin management action plans made pursuant to this act must be completed by July 1, 2021. The department may grant a 6-month extension, upon a showing of good cause, to a local government on the deadlines for its wastewater treatment project plan or onsite sewage treatment and disposal system remediation plans submitted as part of a basin management action plan.

(2) The department shall revise all basin management action plans not included under subsection (1), but adopted pursuant to s. 403.067(7), Florida Statutes, and approved by the Secretary of Environmental Protection or prepared by the department before

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July 1, 2019, to conform existing plans to changes made by this act. Revisions to such basin management action plans made pursuant to this act must be completed by the next required 5-year milestone assessment for those revisions scheduled for on or after July 1, 2021. The department may grant a 6-month extension, upon a showing of good cause, to a local government on the deadlines for its wastewater treatment project plan or onsite sewage treatment and disposal system remediation plans submitted as part of a basin management action plan.

Section 13. The Legislature determines and declares that this act fulfills an important state interest.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 1758
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1200

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Construction Bonds

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Fav/CS
2.	Ryon	Yeatman	CA	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1200 increases the amount of information that a subcontractor must provide to a contractor through a Notice of Nonpayment before the subcontractor may initiate a lawsuit for payment from the contractor's payment bond. These notices must further be declared to be true to the best of the subcontractor's knowledge and belief.

The bill also adds contractors to the list of individuals or entities who are entitled to the benefits of a one-way attorney fee statute for prevailing in litigation against a surety that issues a payment or performance bond for a construction project.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors have an interest in receiving payment for their work. Mechanisms that address these interests of property owners and subcontractors are set forth in the construction lien laws in part I of chapter 713, F.S., for private construction contracts and in s. 255.05, F.S., for public construction contracts.

These mechanisms are especially important where many subcontractors who are not in privity with the owner perform work on a construction project. A subcontractor not in privity with the owner has a contract with the contractor or another subcontractor, but no direct contractual

relationship with the owner. As a result, a subcontractor's identity, work, and charges for services might be unknown to the owner or contractor unless he or she complies with the notice requirements of the lien laws.

Payment Bonds

Under the construction lien laws, a subcontractor may record a lien against the property improved as a means of securing payment of any amounts owed by the owner of the property. However, if the contractor provides a payment bond to secure the payment of subcontractors, the subcontractors must make claims against the bond instead of enforcing liens against the improved property.¹

A payment bond is generally required for public construction contracts and is an option for private construction contracts. These bonds are conditioned on the contractor promptly paying all subcontractors including sub-subcontractors, laborers, and material suppliers who furnish labor, services, or materials under the contractor's contract.

Notices of Commencement

Payment bonds must be recorded in the official records with the clerk of court along with the Notice of Commencement for the construction project. These documents serve a purpose of informing subcontractors of the identity of the contractor responsible for the construction project and the identity of the surety that issued the payment bond.

Notices to Contractor

A Notice to Contractor serves a purpose of informing a contractor of the identity of a subcontractor who is not in privity with the contractor. Providing a Notice to Contractor is the first step that a subcontractor must take to preserve rights to make a claim against a payment bond to make its identity and work known to the contractor.

A Notice to Contractor must include a general description of the materials or services that the subcontractor has furnished or will furnish for the construction project and the subcontractor's name and address and a statement that the subcontractor intends to look to the payment bond to secure payment.² The notice may be served before the subcontractor begins or within 45 days after beginning to furnish labor, materials, or supplies.

Notices of Nonpayment

As a next step to preserve rights to make a claim against a payment bond, the subcontractor must serve a Notice of Nonpayment on the contractor and the surety.³ With respect to public construction contracts, a subcontractor must serve the notice no earlier than 45 days after the first furnishing of labor, services, or materials.⁴ With respect to private contracts, a subcontractor is not required to wait any period of time or wait until a payment is delinquent before serving a

¹ Sections 255.05(1)(c), F.S.; s. 713.23(1)(a), F.S.

² Section 255.05(2)(a)2., F.S.; s. 713.23(1)(c), F.S.

³ Section 255.05(2)(a)2., F.S.; s. 713.23(1)(d), F.S.

⁴ Section 255.05(2)(a)2., F.S.

notice of nonpayment, but the notice must be served no later than 90 days after the final furnishing of labor, services, or materials.⁵

The statute relating to payment bonds for private contracts requires a subcontractor to include in a Notice of Nonpayment a description of the labor, services, and materials furnished and the amounts due and unpaid by the contractor.⁶ However, the statute relating to payment bonds for public construction projects does not identify any specific information that must be included in a Notice of Nonpayment.

Enforcing and Contesting a Claim Against a Payment Bond

After serving the Notice of Nonpayment, a subcontractor generally must initiate a lawsuit to enforce a claim against a payment bond within 1 year after the final furnishing of labor, materials, or supplies.⁷ However, the contractor may shorten that time period by serving the subcontractor with a Notice of Contest of Claim Against Payment Bond. Once served, the subcontractor must initiate a legal action to enforce the claim against the bond within 60 days.⁸

Accountings Under Oath

A contractor who has furnished a payment bond may demand that a subcontractor filing a Notice to Contractor provide a written accounting made under oath. These accountings require a subcontractor to supply more detailed information about its work and charges than it must supply in a Notice to Contractor or a Notice of Nonpayment. Specifically, this accounting must show the

nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the [subcontractor].⁹

As a consequence of providing a false accounting or failing to timely provide the accounting, a subcontractor loses the right to make a claim against the payment bond.¹⁰

Effects of Errors or Omissions in Required Lien Law Notices

The construction lien laws generally do not authorize a penalty or sanction for the negligent inclusion or omission of information in the various notices required to perfect liens which have not prejudiced the owner of an improved property or a contractor.

However, the lien laws describe a fraudulent lien as a lien in which a subcontractor willfully exaggerates the amount of the lien or in which the subcontractor willfully includes a claim for

⁵ Section 713.23(1)(d), F.S.

⁶ Section 713.23(1)(d), F.S.

⁷ Section 255.05(10), F.S.; s. 713.23(1)(e), F.S.

⁸ Section 255.05(2)(a)1., F.S.; s. 713.23(1)(e), F.S.

⁹ Section 713.16(4), F.S. Except for differences in punctuation, provisions of s. 255.05(8), F.S., which relate to bonds for public construction projects, are identical.

¹⁰ Section 713.16(4), F.S.; s. 255.05(8), F.S.

work not performed upon or materials not furnished.¹¹ A fraudulent lien also includes a lien in which “the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration.”¹² A person who willfully files a fraudulent lien commits a third degree felony.¹³ The statute defining and prohibiting fraudulent liens, however, does not appear to apply to similar fraudulent claims against a payment bond.

Attorney Fees in Suits Against a Surety

Section 627.428, F.S., is a one-way attorney fee statute that requires a court to award attorney fees and costs to an insured or beneficiary who prevails in a lawsuit against an insurer. This statute applies to “owners, subcontractors, laborers, and materialmen” who are deemed to be insureds or beneficiaries in suits against a surety under a performance bond for a construction contract.¹⁴ Absent from the list of individuals entitled to the benefits of the one-way attorney fee statute are contractors. A contractor, however, may have an interest in the completion or performance of a construction contract similar to that of an owner if the contractor requires a subcontractor to secure a performance bond.

III. Effect of Proposed Changes:

Notices of Nonpayment (Sections 1 & 4)

Requirements for Additional Details

This bill requires subcontractors who are not in privity, meaning those who do not have a contractual relationship, with a contractor to provide additional details and supporting documentation for the work and services they have provided as a prerequisite to filing a claim against a payment bond.

Specifically, when providing a contractor and surety with a notice of nonpayment, which is the final step before enforcing a claim against a bond, the notice must state the:

- Nature of the labor or services performed;
- Nature of the labor or services to be performed, if known;
- Materials furnished; the materials to be furnished, if known;
- Amount paid on account to date; the amount due; and
- Amount to become due, if known.

Form Notices of Nonpayment

The construction lien laws in chapter 713, F.S., supply a form that subcontractors not in privity with a contractor must use for a notice of nonpayment. However, s. 255.05, F.S., which authorizes notices of nonpayment as a prerequisite to claims against a payment bond for a public construction contract, does not contain a form for the notice. The bill supplies a form consistent with the revised requirements for the notice of nonpayment for public construction contracts and similarly revises the existing form for the notices in chapter 713, F.S.

¹¹ Section 713.31(2)(a), F.S.

¹² *Id.*

¹³ Section 713.31(3), F.S.

¹⁴ Section 627.756(1), F.S.

Additionally, notices of nonpayment must be made under oath and contain this declaration: “I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.”¹⁵

Fraudulent Notices of Nonpayment

The bill provides that the service of a fraudulent notice of nonpayment is a complete defense to the claimant’s claim against a bond. The bill defines a fraudulent notice of nonpayment in connection with a payment bond in a manner similar to how a fraudulent lien is described in the construction lien laws in chapter 713, F.S.¹⁶

As provided in the bill, a notice of nonpayment is fraudulent if a subcontractor willfully exaggerates the amount due, willfully includes a claim for work not performed or materials not furnished for the subject improvement, or prepares the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a notice is not fraudulent because of minor mistakes or errors or a good faith dispute as to the amount due. Moreover, the bill provides that the negligent inclusion or omission of information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim.

Suits Against Sureties (Section 2)

The bill provides that contractors, like owners, subcontractors, laborers, and materialmen under existing law, are entitled to the benefit of the one-way attorney fee statute, s. 627.428, F.S., if they prevail in a lawsuit against a surety under a payment or performance bond.

Effective Date and Application (Sections 5&6)

The bill takes effect on October 1, 2019, and the changes relating to suits by a contractor against a surety will apply to payment or performance bonds issued after the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ A person who is convicted of a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000.

¹⁶ For the specific language describing a fraudulent lien, see s. 713.31(2)(a), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by requiring subcontractors to supply additional details to support a potential claim against a payment bond, may help contractors avoid overpayments to subcontractors. On the other hand, the requirement for more specific information relating to a subcontractor's work and charges will create additional paperwork burdens.

The provision of this bill that gives contractors the benefit of a one-way attorney fee statute in litigation against a surety under a payment or performance bond will help contractors vindicate their rights, but it may encourage additional litigation and result in additional costs to sureties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.05, 627.756, 627.428, and 713.23.

This bill reenacts section 627.428 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 Judiciary on March 25, 2019:

The committee substitute differs from the underlying bill in that it:

- Replaces requirements that notices of nonpayment be verified to be true under penalty of perjury with a requirement that the notices be made under oath and declared to be true to the best of a subcontractor's knowledge and belief.
- Does not include requirements that supporting documentation be attached to a notice of nonpayment.
- Does not include provisions entitling the prevailing party to attorney fees in litigation regarding a claim against a payment bond.
- Does not include changes to the statute governing conditional payment bonds.

- B. **Amendments:**

None.

THE FLORIDA SENATE
APPEARANCE RECORD

04/02/2019

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

1200

Meeting Date

Bill Number (if applicable)

Topic Construction Bonds

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. Associated General Contractors Council

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4-19-19

Bill Number (if applicable) 2B 1200

Amendment Barcode (if applicable) _____

Topic Construction bonds

Name MARK HEBBARD

Job Title _____

Address 113 East Conely Ave Suite 200

Phone 850 966-1824

City Melbourne FL State FL Zip 32901

Email markhebbard@conely.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Unity Contractors Assoc.

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.

This form is part of the public record for this meeting.

By the Committee on Judiciary; and Senator Stargel

590-03469-19

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1 A bill to be entitled
 2 An act relating to construction bonds; amending s.
 3 255.05, F.S.; requiring a notice of nonpayment to be
 4 under oath; requiring the notice to contain certain
 5 statements; specifying that certain negligent
 6 inclusions or omissions do not constitute a default
 7 that operates to default an otherwise valid bond
 8 claim; specifying that a claimant who serves a
 9 fraudulent notice of nonpayment forfeits his or her
 10 rights under a bond; providing that the service of a
 11 fraudulent notice of nonpayment is a complete defense
 12 to the claimant's claim against the bond; requiring a
 13 notice of nonpayment to be in a prescribed form;
 14 amending s. 627.756, F.S.; providing that a provision
 15 relating to attorney fees applies to certain suits
 16 brought by contractors; deeming contractors to be
 17 insureds or beneficiaries in relation to bonds for
 18 construction contracts; reenacting s. 627.428, F.S.,
 19 relating to attorney fees; amending s. 713.23, F.S.;
 20 requiring a lienor to serve a notice of nonpayment
 21 under oath to specified entities during a certain
 22 period of time; requiring a notice of nonpayment to
 23 contain certain statements; specifying that certain
 24 negligent inclusions or omissions do not constitute a
 25 default that operates to default an otherwise valid
 26 bond claim; specifying that a lienor who serves a
 27 fraudulent notice of nonpayment forfeits his or her
 28 rights under the bond; providing that the service of a
 29 fraudulent notice of nonpayment is a complete defense

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 to the lienor's claim against the bond; requiring a
 31 notice of nonpayment to be in a prescribed form;
 32 providing applicability; providing an effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Paragraph (a) of subsection (2) of section
 37 255.05, Florida Statutes, is amended to read:
 38 255.05 Bond of contractor constructing public buildings;
 39 form; action by claimants.-
 40 (2)(a)1. If a claimant is no longer furnishing labor,
 41 services, or materials on a project, a contractor or the
 42 contractor's agent or attorney may elect to shorten the time
 43 within which an action to enforce any claim against a payment
 44 bond must be commenced by recording in the clerk's office a
 45 notice in substantially the following form:
 46
 47 NOTICE OF CONTEST OF CLAIM
 48 AGAINST PAYMENT BOND
 49
 50 To: ...(Name and address of claimant)...
 51
 52 You are notified that the undersigned contests your notice
 53 of nonpayment, dated,, and served on the
 54 undersigned on,, and that the time within
 55 which you may file suit to enforce your claim is limited to 60
 56 days after the date of service of this notice.
 57
 58 DATED on,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Signed: ... (Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is ~~shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve ~~furnish~~ the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on ~~deliver to~~ the contractor and on to ~~to~~ the surety ~~written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.~~ The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, ~~not~~ later than 90 days after the date that the rental equipment was last on the job

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site available for use. The notice of nonpayment must state the nature of the labor or services performed; the nature of the labor or services to be performed, if known; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known. All such information given must be current as of the stated date of the notice. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials, ~~or supplies~~ may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must ~~shall~~ be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of

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any information in the notice of nonpayment that has not
 prejudiced the contractor or surety does not constitute a
 default that operates to defeat an otherwise valid bond claim. A
 claimant who serves a fraudulent notice of nonpayment forfeits
 his or her rights under the bond. A notice of nonpayment is
 fraudulent if the claimant has willfully exaggerated the amount
 due, willfully included a claim for work not performed or
 materials not furnished for the subject improvement, or prepared
 the notice with such willful and gross negligence as to amount
 to a willful exaggeration. However, a minor mistake or error in
 a notice of nonpayment, or a good faith dispute as to the amount
 due, does not constitute a willful exaggeration that operates to
 defeat an otherwise valid claim against the bond. The service of
 a fraudulent notice of nonpayment is a complete defense to the
 claimant's claim against the bond. The notice of nonpayment
 under this subparagraph must be in substantially the following
 form:

NOTICE OF NONPAYMENT

To: ... (name of contractor and address)...

... (name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ... (describe labor, services, or
 materials)... for the improvement of the real property
 identified as ... (property description).... The corresponding
 amount now due and unpaid is \$

2. Claimant has been paid on account to date the amount of
 \$ for previously furnishing ... (describe labor, service, or

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materials)... for this improvement.

3. Claimant expects to furnish ... (describe labor, service,
 or materials)... for this improvement in the future (if known),
 and the corresponding amount expected to become due is \$
 (if known).

I declare that I have read the foregoing Notice of Nonpayment
 and that the facts stated in it are true to the best of my
 knowledge and belief.

DATED on,

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and
 subscribed before me this day of, ... (year)...., by
 ... (name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary
 Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 2. Subsection (1) of section 627.756, Florida
 Statutes, is amended to read:

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175 627.756 Bonds for construction contracts; attorney fees in
176 case of suit.—

177 (1) Section 627.428 applies to suits brought by owners,
178 contractors, subcontractors, laborers, and materialmen against a
179 surety insurer under payment or performance bonds written by the
180 insurer under the laws of this state to indemnify against
181 pecuniary loss by breach of a building or construction contract.
182 Owners, contractors, subcontractors, laborers, and materialmen
183 shall be deemed to be insureds or beneficiaries for the purposes
184 of this section.

185 Section 3. For the purpose of incorporating the amendment
186 made by this act to section 627.756, Florida Statutes, in a
187 reference thereto, section 627.428, Florida Statutes, is
188 reenacted to read:

189 627.428 Attorney's fee.—

190 (1) Upon the rendition of a judgment or decree by any of
191 the courts of this state against an insurer and in favor of any
192 named or omnibus insured or the named beneficiary under a policy
193 or contract executed by the insurer, the trial court or, in the
194 event of an appeal in which the insured or beneficiary prevails,
195 the appellate court shall adjudge or decree against the insurer
196 and in favor of the insured or beneficiary a reasonable sum as
197 fees or compensation for the insured's or beneficiary's attorney
198 prosecuting the suit in which the recovery is had.

199 (2) As to suits based on claims arising under life
200 insurance policies or annuity contracts, no such attorney's fee
201 shall be allowed if such suit was commenced prior to expiration
202 of 60 days after proof of the claim was duly filed with the
203 insurer.

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204 (3) When so awarded, compensation or fees of the attorney
205 shall be included in the judgment or decree rendered in the
206 case.

207 Section 4. Paragraph (d) of subsection (1) of section
208 713.23, Florida Statutes, is amended to read:

209 713.23 Payment bond.—

210 (1)

211 (d) In addition, a lienor who has not received payment for
212 furnishing his or her labor, services, or materials must ~~is~~
213 required, as a condition precedent to recovery under the bond,
214 ~~to~~ serve a written notice of nonpayment to the contractor and
215 the surety. The notice must be under oath and served during the
216 progress of the work or thereafter, but may not be served ~~not~~
217 later than 90 days after the final furnishing of labor,
218 services, or materials by the lienor, or, with respect to rental
219 equipment, later than 90 days after the date the rental
220 equipment was on the job site and available for use. The notice
221 of nonpayment must state the nature of the labor or services
222 performed; the nature of the labor or services to be performed,
223 if known; the materials furnished; the materials to be
224 furnished, if known; the amount paid on account to date; the
225 amount due; and the amount to become due, if known. All such
226 information given must be current as of the stated date of the
227 notice. A notice of nonpayment that includes sums for retainage
228 must specify the portion of the amount claimed for retainage.
229 ~~The required. A written~~ notice satisfies this condition
230 precedent with respect to the payment described in the notice of
231 nonpayment, including unpaid finance charges due under the
232 lienor's contract, and with respect to any other payments which

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233 become due to the lienor after the date of the notice of
 234 nonpayment. The time period for serving a ~~written~~ notice of
 235 nonpayment shall be measured from the last day of furnishing
 236 labor, services, or materials by the lienor and ~~may shall~~ not be
 237 measured by other standards, such as the issuance of a
 238 certificate of occupancy or the issuance of a certificate of
 239 substantial completion. The failure of a lienor to receive
 240 retainage sums not in excess of 10 percent of the value of
 241 labor, services, or materials furnished by the lienor is not
 242 considered a nonpayment requiring the service of the notice
 243 provided under this paragraph. If the payment bond is not
 244 recorded before commencement of construction, the time period
 245 for the lienor to serve a notice of nonpayment may at the option
 246 of the lienor be calculated from the date specified in this
 247 section or the date the lienor is served a copy of the bond.
 248 However, the limitation period for commencement of an action on
 249 the payment bond as established in paragraph (e) may not be
 250 expanded. The negligent inclusion or omission of any information
 251 in the notice of nonpayment that has not prejudiced the
 252 contractor or surety does not constitute a default that operates
 253 to defeat an otherwise valid bond claim. A lienor who serves a
 254 fraudulent notice of nonpayment forfeits his or her rights under
 255 the bond. A notice of nonpayment is fraudulent if the lienor has
 256 willfully exaggerated the amount due, willfully included a claim
 257 for work not performed or materials not furnished for the
 258 subject improvement, or prepared the notice with such willful
 259 and gross negligence as to amount to a willful exaggeration.
 260 However, a minor mistake or error in a notice of nonpayment, or
 261 a good faith dispute as to the amount due, does not constitute a

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262 willful exaggeration that operates to defeat an otherwise valid
 263 claim against the bond. The service of a fraudulent notice of
 264 nonpayment is a complete defense to the lienor's claim against
 265 the bond. The notice under this paragraph must ~~may~~ be in
 266 substantially the following form:

NOTICE OF NONPAYMENT

270 To ...(name of contractor and address)...

271 ...(name of surety and address)...

272 The undersigned notifies you that:

273 1. The lienor ~~he or she~~ has furnished ...(describe labor,
 274 services, or materials)...for the improvement of the real
 275 property identified as ...(property description).... The
 276 corresponding amount now due and unpaid is \$....

277 2. The lienor has been paid on account to date the amount
 278 of \$.... for previously furnishing ...(describe labor, services,
 279 or materials)... for this improvement.

280 3. The lienor expects to furnish ...(describe labor,
 281 service, or materials)... for this improvement in the future (if
 282 known), and the corresponding amount expected to become due is
 283 \$.... (if known).

284
 285 I declare that I have read the foregoing Notice of Nonpayment
 286 and that the facts stated in it are true to the best of my
 287 knowledge and belief.

288
 289 DATED on,
 290

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291 ... (signature and address of lienor)...

292

293 STATE OF FLORIDA

294 COUNTY OF

295

296 The foregoing instrument was sworn to (or affirmed) and
297 subscribed before me this day of, ...(year)..., by
298 ...(name of signatory)....

299 ...(Signature of Notary Public - State of Florida)...

300 ...(Print, Type, or Stamp Commissioned Name of Notary
301 Public)...

302

303 Personally Known OR Produced Identification
304 Type of Identification Produced.....

305

306 Section 5. The amendments made by this act to s. 627.756,
307 Florida Statutes, apply only to payment or performance bonds
308 issued on or after October 1, 2019.

309 Section 6. This act shall take effect October 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 1200
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1508

INTRODUCER: Senator Simmons

SUBJECT: Neighborhood Improvement Districts

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1508 revises provisions relating to the board of directors of a special neighborhood improvement district including authorizing the appointment of a three-, five-, or seven-member board and requiring the board of directors to be landowners in the district. The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

The bill creates the Safe Neighborhood Improvement District Revolving Loan Program. Under the bill, the Department of Legal Affairs (DLA) may provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for projects that are in the plans of a safe neighborhood improvement district (SNID). The DLA must set aside 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund for small SNIDs.

In order to be eligible for a loan under the program, the qualified electors of the SNID must approve the use of revolving loans by referendum.

The bill also provides for audits of the loan projects upon completion, the investment of unused funds, and a process by which to handle defaults of the loan projects.

The DLA must prepare a report at the end of each fiscal year which details the financial assistance provided, service fees collected, interest earned, and loans outstanding and provide the report to the appropriations committees in the Senate and the House of Representatives.

II. Present Situation:

Safe Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the “Safe Neighborhoods Act.” The intent of the Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and preserve and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety;
- Reduce crime rates and the opportunities for the commission of crime; and
- Provide improvements in neighborhoods so they are defensible against crime.¹

Section 163.503(1), F.S., defines the term “safe neighborhood improvement district” (SNID) or “neighborhood improvement district” to mean:

A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations.

The Safe Neighborhoods Act allows county or municipal governing bodies to create SNIDs through the adoption of a planning ordinance. Each SNID that is established is required to register within 30 days with both the Department of Economic Opportunity (DEO) and the Department of Legal Affairs (DLA) and provide the name, location, size, type of SNID, and such other information that the departments may require.² Under current law, there are four types of SNIDs:

- Local government SNIDs;
- Property owners’ association SNIDs;
- Community redevelopment SNIDs; and
- Special SNIDs, which are further classified as either residential or business.³

¹ See s. 163.502(3), F.S.

² Section 163.5055(1)(a), F.S.

³ See ss. 163.506-163.512, F.S.

As of March 29, 2019, there are 26 active SNIDs in the state of Florida.⁴ Twenty-three of these are local government SNIDs; two are special residential SNIDs; and one is classified as a property owners' association SNID.

SNID Boards and Revenue Sources

The board of directors of a local government SNID is the local governing body of the municipality or county that created the SNID; however, as an alternative, a majority of the local governing body may also appoint a different board.⁵ The board of a property owners' association SNID is comprised of the officers of the property owners' association.⁶

The board of a special SNID is a three-member body, appointed by the governing body of the municipality or county that created the SNID, who are residents of the area and serve staggered terms of 3 years.⁷ The board of a community redevelopment SNID is the community redevelopment board of commissioners, which is designated by the governing body of the municipality or county that created the board of commissioners.⁸

Local government SNIDs and special SNIDs are authorized to levy ad valorem taxes up to 2 mills annually.⁹ Local government SNIDs are authorized to levy tax without a referendum; however, special SNIDs require a referendum to levy ad valorem taxes.¹⁰ For a special *residential* SNID, taxes are approved by a majority of the electors voting in the referendum.¹¹ For a special *business* SNID, taxes are approved by freeholders representing in excess of 50 percent of the assessed value of the property within the SNID.¹²

All SNIDs are also authorized to make and collect special assessments, but all special assessments are subject to referendum approval.¹³ Special assessments are approved by a majority of registered voters residing in the SNID.¹⁴ Assessments may be collected pursuant to ss. 197.3632 and 197.3635, F.S. (the uniform method for collection of non-ad valorem assessments). Assessments may not exceed \$500 for each individual parcel of land per year.

Community redevelopment SNIDs may also utilize community redevelopment trust funds to implement district planning and programming.¹⁵

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

⁵ Sections 163.506(1)(e) and (3), F.S.

⁶ Section 163.508(1)(e), F.S.

⁷ Sections 163.511(1)(f), and (8), F.S.

⁸ Section 163.512(1)(d), F.S.

⁹ Sections 163.506(1)(c), F.S., and 163.511(1)(b), F.S.

¹⁰ Section 163.511(1)(a) and (b), F.S.

¹¹ Section 163.511(3)(g), F.S. Although the word “elector” is used in s. 163.511(3)(g), F.S., it appears that the intent is that the vote be made by residents within the district that are registered voters. See s. 163.511(3)(b), F.S.

¹² Section 163.511(4)(g), F.S.

¹³ Section 163.514(16), F.S. This authority and any of the other SNID powers enumerated in s. 163.514, F.S., may be prohibited by the SNID's enacting ordinance.

¹⁴ *Id.* See also Footnote 11 regarding the term “elector.”

¹⁵ Section 163.512(1)(c), F.S.

SNID Dissolutions

Local government and community redevelopment SNIDs may be dissolved by the governing body that established them.¹⁶ Property owners' association SNIDs continue in perpetuity as long as the property owners' association exists.¹⁷ Special SNIDs are dissolved at the end of the tenth fiscal year of operation.¹⁸

SNIDs and Bond Authority

Although SNIDs have various powers, they do not have express authority to borrow funds. In 2006, the Florida Attorney General issued Opinion 2006-49, stating that an SNID created by ordinance pursuant to s. 163.511, F.S., does not have the authority to borrow money to carry out the purposes of the SNID.¹⁹ The Attorney General's Office reasoned that a statutorily created entity is limited to such powers expressly granted by law or reasonably implied to carry out its expressly granted power. The opinion further stated that "[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against its being done any other way."

Duties of the Department of Legal Affairs

Many of the programs in the Safe Neighborhoods Act are administered by the DLA whose duties include the authority to:

- Develop program design and criteria for funding SNIDs;
- Develop application and review procedures;
- Review and evaluate applications for planning and technical assistance;
- Utilize staff to provide crime prevention through community policing innovations, environmental design, environmental security, and defensible space training; and
- Review and approve or disapprove safe neighborhood improvement plans prior to the adoption by the local governing body.²⁰

Safe Neighborhoods Program

Section 163.517, F.S., provides for the creation of the Safe Neighborhoods Program. The purpose of this program is to "provide planning grants and technical assistance on a 100-percent matching basis to neighborhood improvement districts." Under this section, planning grants are to be awarded as follows:

- Property owners' association SNIDs may receive up to \$20,000.
- Local government SNIDs may receive up to \$100,000.
- Special SNIDs may receive up to \$50,000.
- Community redevelopment SNIDs may receive up to \$50,000.

Grants are awarded to eligible applicants based on evaluation of specified criteria provided in subsections (2) and (3) of s. 163.517, F.S.

¹⁶ Sections 163.506(4) and 163.512(3), F.S.

¹⁷ Section 163.508(4), F.S.

¹⁸ Section 163.511(13), F.S. Special SNIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.

¹⁹ Op. Atty. Gen. Fla. 2006-49 (2006).

²⁰ See s. 163.519, F.S.

While the DLA is charged with overseeing the Safe Neighborhoods Program, funding for the program was repealed in 1992, and there is currently no staff or funding allocated to manage the program and its grants.²¹

Safe Neighborhood Improvement Plan

All SNIDs are currently required to prepare a safe neighborhood improvement plan that addresses the statutory criteria provided in s. 163.516, F.S. The safe neighborhood improvement plan must be consistent with the adopted county or municipal comprehensive plan and must be “sufficiently complete to indicate such land acquisition, demolition and removal of structures, street modifications, redevelopment, and rehabilitation as may be proposed to be carried out in the district.”²² Additionally, the SNID must provide some method for and measurement of the reduction of crime within the district.²³

Neighborhood Preservation and Enhancement Programs and Districts

The governing body of a municipality or county may authorize participation in the Neighborhood Preservation and Enhancement Program through the adoption of a local ordinance.²⁴ Neighborhood preservation and enhancement districts are created by the residents of a particular neighborhood or through county or municipal initiative by identifying those areas that are in need of enhancement. Neighborhood preservation and enhancement plans are enforced through an agency created by the local government which may be composed of the local code enforcement board or any other agency that will provide adequate enforcement of the plan.²⁵

After the boundaries and size of the neighborhood preservation and enhancement district have been defined, the residents therein shall create a neighborhood council, consisting of five elected members who shall have the authority to receive grants from the Safe Neighborhoods Program under s. 163.517, F.S. The established neighborhood council and local government designated enforcement agency must have such powers and duties as provided under s. 163.526, F.S. These powers include the special assessments provisions of s. 163.514, F.S.²⁶

The Special District Information Program within the DEO currently lists one active Neighborhood Preservation and Enhancement District in the state.²⁷

²¹ Telephone conversation with Daniel Olson, Department of Legal Affairs, Legislative and Cabinet Affairs (March 29, 2019).

²² Section 163.516(3), F.S.

²³ *Id.*

²⁴ *See* s. 163.524(1), F.S.

²⁵ *Id.*

²⁶ Section 163.526(1)(a), F.S.

²⁷ Sugarfoot Oaks/Cedar Ridge Preservation and Enhancement District is located in Alachua County. *See* Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

Community Organization Involvement

Section 163.523, F.S., authorizes local governments to cooperate and seek the involvement of certain community organizations to assist in the creation of SNIDs. Except for the preparation of safe neighborhood improvement plans, SNIDs may contract with community organizations to carry out any activities in the SNID and to provide maintenance services for implemented projects. Community organization compensation for activities is capped at one percent of the total annual budget of the SNID. Maintenance services compensation may not exceed two percent of individual project budgets.

Other Sources of Funding for Local Government Improvement Efforts

County and municipal governments have authority under current law and under their constitutional home rule authority to raise revenue that could be used for many of the purposes identified by the Safe Neighborhoods Act in current law and the Safe Neighborhood Improvement District Revolving Loan Program created by this bill.

Section 125.01(1)(q), F.S., provides that counties may establish:

municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which it may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water..., streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.... This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Section 125.01(1)(r), F.S., grants counties the power to levy and collect ad valorem taxes, and provides that no referendum is required for the levy by a county of ad valorem taxes for county purposes or for providing municipal services within any municipal service taxing unit. The distinction between a municipal service taxing unit and a municipal service benefit unit is that in a benefit unit the services are funded by a service charge or a special assessment rather than a tax.

All taxes, other than ad valorem taxes, are preempted to the state.²⁸ Local governments may levy other taxes only if those taxes are authorized by general law. Not all local government revenue sources are taxes. Counties and municipalities may levy fees, assessments, or charges for services under their home rule authority. Special assessments may be used to fund certain services and to construct and maintain capital facilities, such as those appropriate for SNIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit

²⁸ Fla. Const. Art. VII, s. 1(a)

from the service or improvement funded by the assessment, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 163.511, F.S., to revise several provisions relating to the board of directors of a special neighborhood improvement district. Specifically, the bill provides for the appointment of a three-, five-, or seven-member board, which must be specified in the local planning ordinance, rather than the 3-member board currently provided by law.

The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

Additionally, the board of directors must be landowners in the district, whereas current law only required the board of directors to be residents of the area. Finally, the bill removes the requirement that the appointment of the board of directors be for a period of 3 years, implicitly authorizing the district to provide for its own term lengths in its local planning ordinance.

Section 2 creates s. 163.5161, F.S., relating to the Safe Neighborhood Improvement District Revolving Loan Program.

Purpose (Subsection 1)

The purpose of this section is to help implement the legislative public policy of guiding the coordinated, balanced, and harmonious development of SNIDs. This is accomplished by ensuring that SNIDs have adequate finances to plan and increase crime prevention through environmental design, environmental security, or defensible space techniques, or through community policing innovations.

Definitions (Subsection 2)

“Bonds” means bonds, certificates, or other obligations of indebtedness issued by the Department of Legal Affairs (DLA) under this section.

“Neighborhood improvements” means all facilities, including land, water, utilities, and roads, necessary for providing critical infrastructure to implement the crime prevention plans of a SNID.

Providing a Loan (Subsection 3, 4, 5, 6, and 9)

The bill authorizes the DLA to provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for projects that are in the plans of a SNID and that have been approved by the department. A SNID may borrow these funds and may pledge any revenues or other adequate security available to the SNID to repay any refunds borrowed.

The DLA must administer loans so that 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund in any fiscal year is reserved

²⁹ See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

for small SNIDs. However, if an insufficient number of projects for which funds are reserved have been submitted to the DLA at the time a funding priority list is adopted, the reservation of these funds no longer applies. The DLA may award the unreserved funds as otherwise provided.

The term of loans made pursuant to this section may not exceed the life of the project secured by the bond. The interest rate on the loans may not exceed that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

The DLA may provide financial assistance to small SNIDs, as determined by the DLA, including providing forgiveness of the loan principal.

In order to ensure that public moneys are managed in an equitable, prudent, and cost-effective manner, the total amount of money loaned to any SNID during a fiscal year may not exceed 25 percent of the total funds available for making loans during that year.

Before being approved for a loan, the SNID must, at a minimum:

- Provide a repayment schedule.
- Submit evidence that the project proposed for financial assistance can be permitted or implemented.
- Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.
- Provide assurance that records will be kept using generally accepted accounting principles and that the DLA and the Auditor General will have access to all records pertaining to the loan.
- Provide assurance that the goods and services funded will be properly operated and maintained.

Approval by Referendum (Subsection 10)

Additionally, a SNID may not receive a revolving loan unless the local government approves a resolution that provides for a referendum, and the qualified electors of the SNID have approved the use of revolving loans by referendum. The referendum must include the estimated cost of the capital projects that are anticipated to be funded by the revolving loan funds and the amount of the loan. Furthermore, the referendum must meet all of the following requirements:

- The referendum to approve the loan funds shall be by mail ballot.
- Within 45 days after the date the city or county commission enacts an ordinance calling a referendum, the city clerk or the supervisor of elections, as appropriate, must compile a list of the names and last known addresses of the electors within the SNID from the list of registered voters of the municipality or county, as appropriate, as of the last day of the preceding month, which must be the registration list for the referendum. A resident of the district whose name does not appear on the registration list may register to vote in the referendum as otherwise provided by law.
- Within 45 days after compilation of the voter registration list, the city clerk or the supervisor of elections, as appropriate, shall notify each qualified elector of the provisions of the ordinance and the date of the upcoming referendum. Notification shall be by first-class mail and a one-time publication in a newspaper of general circulation in the municipality or county, as appropriate, in which the district is located.

- The registration list must remain open for 75 days after the date of the mailing of the notices to the electors as provided above.
- Within 15 days after closing the registration list, the city clerk or the supervisor of elections, as appropriate, shall send a ballot to each elector at his or her last known mailing address by first-class mail. The ballot must include:
 - A description of the capital projects to be funded by the loan and the revenue sources that will be used to repay the loan.
 - A statement asking whether the qualified elector authorizes the SNID to use revolving loan funds, the specific amount of loan funds to be issued, and the estimated cost of the capital projects to be paid for by those loan funds.
- Ballots must be returned by mail or by personal delivery.
- The city clerk or the supervisor of elections, as appropriate, shall tabulate all ballots received within 60 days after the closing of the registration list. The appropriate person must then certify the results to the city or county commission within 5 days.
- The use of revolving loan funds is deemed to have been approved only upon the affirmative vote of a majority of the registered voters in the SNID voting on the issue.

Audit (Subsection 11)

The DLA may conduct an audit of the loan project upon completion, or may require that a separate project audit, prepared by an independent certified public accountant, be submitted.

Service Fees (Subsection 12)

The DLA may require reasonable service fees on loans made to SNIDs to ensure that the Safe Neighborhood Improvement District Revolving Loan Trust Fund will be operated in perpetuity and to implement the purposes authorized under this section. Service fees may not be less than 2 percent nor greater than 4 percent of the loan amount exclusive of the service fee. Service fee revenues shall be deposited into the DLA's Grants and Donations Trust Fund. The fee revenues, and interest earnings thereon, shall be used exclusively to carry out the purposes of this section.

Investment of Unused Funds (Subsection 13)

The Safe Neighborhood Improvement District Revolving Loan Trust Fund shall be used exclusively to carry out the purposes of this section. Any funds that are not needed immediately for financial assistance shall be invested pursuant to s. 215.49, F.S.³⁰ The principal and interest of all loans repaid and investment earnings shall be deposited into the fund.

Default (Subsection 14)

If a SNID defaults under the terms of its loan agreement, the DLA must certify as such to the Chief Financial Officer, who shall forward the delinquent amount to the department from any unobligated funds due to the SNID under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency may not limit the DLA from pursuing other remedies available for default on a loan, including

³⁰ Section 215.49, F.S., entitled "Making funds available for investment," requires each state agency and the judicial branch to invest certain funds with the State Board of Administration.

accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and requesting a court appoint a receiver to manage the SNID.

The DLA may impose a penalty for delinquent loan payments in the amount of 6 percent of the amount due, in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

The DLA may terminate or rescind a financial assistance agreement if the recipient fails to comply with the terms and conditions of the agreement.

Rules by the Department (Subsections 5 and 7)

The DLA must establish by rule the criteria for determining whether a SNID serves a financially disadvantaged community. Such criteria shall be based on the median household income of the service population or other reliably documented measures of disadvantaged status.

The DLA may also adopt rules to:

- Establish a priority system for loans based on degree of likelihood of enhancing crime prevention and affordability within a SNID.
- Establish the requirements for the award and the repayment of financial assistance.
- Require evidence of credit worthiness and adequate security, including an identification of revenues to be pledged and documentation of the sufficiency of revenues for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.
- Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

Required Report (Subsection 8)

The DLA shall prepare a report at the end of each fiscal year which details the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding. The report shall be provided to the appropriations committees in the Senate and the House of Representatives.

Section 3 provides 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Residents of SNIDs may experience safer and more secure neighborhoods if the SNIDs effectively use the revolving loan program.

C. Government Sector Impact:

SNIDs may receive loans that facilitate the SNID's implementation of its crime prevention plans.

The Department of Legal Affairs determined that the bill would have a significant, but indeterminate fiscal impact.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

"Neighborhood improvements" is defined in s. 163.5161(2)(b), F.S., but the term is not otherwise used in the bill. It appears this term was intended to provide a list of eligible projects for the loan program. If so, the bill may need an amendment to reflect that intent.

The term "bonds" is also defined in s. 163.5161(2)(a), F.S., but the bill does not contemplate the issuance of bonds.

It is also unclear what constitutes a "small" safe neighborhood improvement district in line 126 of the bill. Additionally, on line 139, the bill refers to a "small neighborhood improvement district." In every other reference in the bill, we use "safe neighborhood improvement district."

³¹ Email from the Department of Legal Affairs, dated March 29, 2019 (Copy on file with the Community Affairs Committee).

Lines 142 through 147 authorize the DLA to establish by rule the criteria for determining whether a SNID serves a financially disadvantaged community. The bill does not discuss whether SNIDs that are financially disadvantaged communities are intended to receive preferential treatment or status in comparison to other SNIDs.

The bill uses the term “registered voters” in line 249. To be consistent, the term “qualified electors” should be used.

VIII. Statutes Affected:

This bill substantially amends section 163.511 of the Florida Statutes.

This bill creates section 163.5161 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

5/2/19
Meeting Date

1508
Bill Number (if applicable)

Topic Neighborhood Improvement
Amendment Barcode (if applicable)

Name Mario J. Bailey

Job Title Sen Gov Relations

Address 555 NE 34th ST Apt 1608

Street Miami FL 33132
City State Zip

Phone 205-246-3932

Email mbailey@bedrbailey.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of Landershill

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date April 2, 2019

Bill Number (if applicable) 1508

Topic Neighborhood Improvement Districts

Amendment Barcode (if applicable) _____

Name Kyle Shephard

Job Title Legislative Counsel

Address 400 S. Orange Ave.

Phone (407) 579-5952

City Orlando State FL Zip 32801

Email kyle.shephard@orlando.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Orlando

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.

This form is part of the public record for this meeting.

By Senator Simmons

9-01763-19

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1 A bill to be entitled
 2 An act relating to neighborhood improvement districts;
 3 amending s. 163.511, F.S.; increasing the maximum
 4 number of directors allowed for boards of special
 5 neighborhood improvement districts; requiring local
 6 planning ordinances to specify the number of directors
 7 and their term lengths and to provide for staggered
 8 terms; deleting a provision requiring directors to
 9 serve for 3 years and a provision relating to term
 10 length for initial director appointments; creating s.
 11 163.5161, F.S.; creating the Safe Neighborhood
 12 Improvement District Revolving Loan Program; providing
 13 legislative purpose; providing definitions;
 14 authorizing the Department of Legal Affairs to provide
 15 loans for specified projects within safe neighborhood
 16 improvement districts; authorizing a safe neighborhood
 17 improvement district to borrow funds made available
 18 under the program and to pledge revenues to repay such
 19 funds; specifying the procedures by which the
 20 department is to administer and manage the loans;
 21 specifying the term of such loans; authorizing the
 22 department to provide financial assistance to small
 23 safe neighborhood improvement districts; requiring the
 24 department to establish by rule the criteria for
 25 determining whether a safe neighborhood improvement
 26 district serves a financially disadvantaged community;
 27 limiting the total amount of money that may be loaned
 28 during a fiscal year; authorizing the department to
 29 adopt rules related to the loan program; requiring the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 department to prepare an annual report and submit it
 31 to specified committees in the Legislature; specifying
 32 items that the safe neighborhood improvement districts
 33 must submit to the department before being approved
 34 for loans; requiring the approval of the use of the
 35 revolving loans by the registered voters of the
 36 district by referendum; specifying items to be
 37 included in the referendum; requiring the referendum
 38 to be sent by mail and published; specifying audit
 39 procedures once a loan project is completed;
 40 authorizing the department to charge reasonable
 41 service fees on loans to ensure the Safe Neighborhood
 42 Improvement District Revolving Loan Trust Fund will be
 43 operated in perpetuity; specifying fee amounts;
 44 restricting uses of the trust fund; specifying
 45 procedures if a safe neighborhood improvement district
 46 defaults under the terms of its loan agreement;
 47 authorizing the department to levy penalties for
 48 delinquent loan payments; authorizing the department
 49 to terminate or rescind a financial assistance
 50 agreement under certain conditions; providing an
 51 effective date.
 52
 53 Be It Enacted by the Legislature of the State of Florida:
 54
 55 Section 1. Paragraph (f) of subsection (1) and subsections
 56 (7) and (8) of section 163.511, Florida Statutes, are amended to
 57 read:
 58 163.511 Special neighborhood improvement districts;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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creation; referendum; board of directors; duration; extension.-

(1) After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts, the governing body of a municipality or county may declare the need for and create special residential or business neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(f) Provides for the appointment of a three-, five-, or seven-member ~~3-member~~ board of directors for the district.

(7) The business and affairs of a special neighborhood improvement district must ~~shall~~ be conducted and administered by a board of three, five, or seven directors who must ~~shall~~ be landowners in residents of the proposed area and who are subject to ad valorem taxation in the district. Upon their appointment and qualification and in January of each year, the directors shall organize by electing from their number a chair and a secretary, and may also employ staff and legal representatives as deemed appropriate, who shall serve at the pleasure of the board and may receive such compensation as shall be fixed by the board. The secretary shall keep a record of the proceedings of the district and shall be custodian of all books and records of the district. The directors shall not receive any compensation for their services, nor may they be employed by the district.

(8) Within 30 days of the approval of the creation of a special neighborhood improvement district, if the district is in a municipality, a majority of the governing body of the municipality, or if the district is in the unincorporated area of the county, a majority of the county commission, shall appoint the ~~three~~ directors provided for herein, the number of

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which must be specified in the local planning ordinance, which must also provide for staggered terms of 3 years. The initial appointments shall be as follows: one for a 1-year term, one for a 2-year term, and one for a 3-year term. Each director shall hold office until his or her successor is appointed and qualified unless the director ceases to be qualified to act as a director or is removed from office. Vacancies on the board shall be filled for the unexpired portion of a term in the same manner as the initial appointments were made.

Section 2. Section 163.5161, Florida Statutes, is created to read:

163.5161 Safe Neighborhood Improvement District Revolving Loan Program; use; rules.-

(1) The purpose of this section is to help implement the legislative public policy of guiding the coordinated, balanced, and harmonious development of safe neighborhood improvement districts. This is accomplished by ensuring such districts have adequate finances to plan and increase crime prevention through environmental design, environmental security, or defensible space techniques, or through community policing innovations.

(2) For purposes of this section, the term:

(a) "Bonds" means bonds, certificates, or other obligations of indebtedness issued by the department under this section.

(b) "Neighborhood improvements" means all facilities, including land, water, utilities, and roads, necessary for providing critical infrastructure to implement the crime prevention plans of a safe neighborhood improvement district.

(3) The department may provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of

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new loans for projects that are in the plans of a safe neighborhood improvement district and that have been approved by the department. A safe neighborhood improvement district may borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to the district to repay any funds borrowed.

(a) The department shall administer loans so that 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund in any fiscal year is reserved for small safe neighborhood improvement districts.

(b) If an insufficient number of the projects for which funds are reserved under this subsection have been submitted to the department at the time a funding priority list is adopted, the reservation of these funds no longer applies. The department may award the unreserved funds as otherwise provided in this section.

(4) The term of loans made pursuant to this section may not exceed the life of the project secured by the bond. The interest rate on such loans may not exceed that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

(5) (a) The department may provide financial assistance to small neighborhood improvement districts, as determined by the department, including providing forgiveness of the loan principal.

(b) The department shall establish by rule the criteria for determining whether a safe neighborhood improvement district serves a financially disadvantaged community. Such criteria must be based on the median household income of the service

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population or other reliably documented measures of disadvantaged status.

(6) In order to ensure that public moneys are managed in an equitable, prudent, and cost-effective manner, the total amount of money loaned to any safe neighborhood improvement district during a fiscal year may not exceed 25 percent of the total funds available for making loans during that year.

(7) The department may adopt rules to do all of the following:

(a) Establish a priority system for loans based on degree of likelihood of enhancing crime prevention and affordability within a safe neighborhood improvement district.

(b) Establish the requirements for the award and the repayment of financial assistance.

(c) Require evidence of credit worthiness and adequate security, including an identification of revenues to be pledged and documentation of the sufficiency of revenues for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.

(d) Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

(8) The department shall prepare a report at the end of each fiscal year which details the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding. The report must be provided to the appropriations committees in the Senate and the House of Representatives.

(9) Before being approved for a loan, the safe neighborhood

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175 improvement district must, at a minimum:
 176 (a) Provide a repayment schedule.
 177 (b) Submit evidence that the project proposed for financial
 178 assistance can be permitted or implemented.
 179 (c) Submit plans and specifications, biddable contract
 180 documents, or other documentation of appropriate procurement of
 181 goods and services.
 182 (d) Provide assurance that records will be kept using
 183 generally accepted accounting principles and that the department
 184 and the Auditor General will have access to all records
 185 pertaining to the loan.
 186 (e) Provide assurance that the goods and services funded
 187 will be properly operated and maintained.
 188 (10) A safe neighborhood improvement district may not
 189 receive a revolving loan under this section unless the local
 190 government approves a resolution that provides for a referendum,
 191 and the qualified electors of the district have approved the use
 192 of revolving loans by referendum. The referendum must include
 193 the estimated cost of the capital projects that are anticipated
 194 to be funded by the revolving loan funds and the amount of the
 195 loan.
 196 (a) The referendum to approve the loan funds must be by
 197 mail ballot.
 198 (b) Within 45 days after the date the city or county
 199 commission enacts an ordinance calling a referendum, the city
 200 clerk or the supervisor of elections, as appropriate, shall
 201 compile a list of the names and last known addresses of the
 202 electors within the safe neighborhood improvement district from
 203 the list of registered voters of the municipality or county, as

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204 appropriate, as of the last day of the preceding month, which
 205 must be the registration list for the referendum. A resident of
 206 the district whose name does not appear on the registration list
 207 may register to vote in the referendum as otherwise provided by
 208 law.
 209 (c) Within 45 days after compilation of the voter
 210 registration list, the city clerk or the supervisor of
 211 elections, as appropriate, shall notify each qualified elector
 212 of the provisions of the ordinance and the date of the upcoming
 213 referendum. Notification shall be by first-class mail and a one-
 214 time publication in a newspaper of general circulation in the
 215 municipality or county, as appropriate, in which the district is
 216 located.
 217 (d) The registration list must remain open for 75 days
 218 after the date of the mailing of the notices to the electors as
 219 provided in paragraph (c).
 220 (e) Within 15 days after closing the registration list, the
 221 city clerk or the supervisor of elections, as appropriate, shall
 222 send a ballot to each elector at his or her last known mailing
 223 address by first-class mail. The ballot must include:
 224 1. A description of the capital projects to be funded by
 225 the loan and the revenue sources that will be used to repay the
 226 loan.
 227 2. The following statement:
 228
 229 "Do you favor authorizing the Safe Neighborhood
 230 Improvement District to use revolving loan funds in the amount
 231 of \$..... to finance capital projects that are estimated
 232 to cost \$..... as provided by section 163.5161, Florida

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20191508__

233 Statutes?

234
235Yes, I favor authorizing the use of revolving loan
236 funds for district purposes.

237No, I am opposed to authorizing the use of revolving
238 loan funds for district purposes."

239
240 (f) Ballots must be returned by mail or by personal
241 delivery.

242 (g) All ballots received within 60 days after the closing
243 of the registration list shall be tabulated by the city clerk or
244 the supervisor of elections, as appropriate, who shall certify
245 the results thereof to the city or county commission, as
246 appropriate, no later than 5 days thereafter.

247 (h) The use of revolving loan funds is deemed to have been
248 approved only upon the affirmative vote of a majority of the
249 registered voters in the district voting on the issue.

250 (11) The department may conduct an audit of the loan
251 project upon completion, or may require that a separate project
252 audit, prepared by an independent certified public accountant,
253 be submitted.

254 (12) The department may require reasonable service fees on
255 loans made to safe neighborhood improvement districts to ensure
256 that the Safe Neighborhood Improvement District Revolving Loan
257 Trust Fund will be operated in perpetuity and to implement the
258 purposes authorized under this section. Service fees may not be
259 less than 2 percent nor greater than 4 percent of the loan
260 amount exclusive of the service fee. Service fee revenues shall
261 be deposited into the department's Grants and Donations Trust

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262 Fund. The fee revenues, and interest earnings thereon, shall be
263 used exclusively to carry out the purposes of this section.

264 (13) The Safe Neighborhood Improvement District Revolving
265 Loan Trust Fund must be used exclusively to carry out the
266 purposes of this section. Any funds that are not needed
267 immediately for financial assistance must be invested pursuant
268 to s. 215.49. The principal and interest of all loans repaid and
269 investment earnings thereon shall be deposited into the fund.

270 (14) (a) If a safe neighborhood improvement district
271 defaults under the terms of its loan agreement, the department
272 must so certify to the Chief Financial Officer, who shall
273 forward the amount delinquent to the department from any
274 unobligated funds due to the safe neighborhood improvement
275 district under any revenue-sharing or tax-sharing fund
276 established by the state, except as otherwise provided by the
277 State Constitution. Certification of delinquency may not limit
278 the department from pursuing other remedies available for
279 default on a loan, including accelerating loan repayments,
280 eliminating all or part of the interest rate subsidy on the
281 loan, and requesting a court appoint a receiver to manage the
282 safe neighborhood improvement district.

283 (b) The department may impose a penalty for delinquent loan
284 payments in the amount of 6 percent of the amount due, in
285 addition to charging the cost to handle and process the debt.
286 Penalty interest shall accrue on any amount due and payable
287 beginning on the 30th day following the date upon which payment
288 is due.

289 (15) The department may terminate or rescind a financial
290 assistance agreement if the recipient fails to comply with the

9-01763-19

20191508__

291 terms and conditions of the agreement.

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

COMMITTEE: Community Affairs
ITEM: SB 1508
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1510

INTRODUCER: Community Affairs Committee and Senator Simmons

SUBJECT: Trust Funds/Safe Neighborhood Improvement District Revolving Loan Trust
Fund/Department of Legal Affairs

DATE: April 2, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1510 creates the Safe Neighborhood Improvement District Revolving Loan Trust Fund within the Department of Legal Affairs to provide loans to safe neighborhood improvement districts that meet criteria established under the Safe Neighborhood Improvement District Revolving Loan Program in SB 1508.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the effective date of the bill authorizing the initial creation of the trust fund unless the Legislature sets a shorter time.

The bill provides that it shall take effect on the same date that SB 1508 or similar legislation takes effect, if such legislation is adopted in the same session and becomes law. SB 1508 takes effect upon becoming a law.

II. Present Situation:

Safe Neighborhoods Act

Part IV of ch. 163, F.S., is known as the "Safe Neighborhoods Act." The intent of the Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and preserve and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety;
- Reduce crime rates and the opportunities for the commission of crime; and
- Provide improvements in neighborhoods so they are defensible against crime.¹

Section 163.503(1), F.S., defines the term “safe neighborhood improvement district” (SNID) or “neighborhood improvement district” to mean:

A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations.

The Safe Neighborhoods Act allows county or municipal governing bodies to create SNIDs through the adoption of a planning ordinance. Each SNID that is established is required to register within 30 days with both the Department of Economic Opportunity (DEO) and the Department of Legal Affairs (DLA) and provide the name, location, size, type of SNID, and such other information that the departments may require.² Under current law, there are four types of SNIDs:

- Local government SNIDs;
- Property owners’ association SNIDs;
- Community redevelopment SNIDs; and
- Special SNIDs, which are further classified as either residential or business.³

As of March 29, 2019, there are 26 active SNIDs in the state of Florida.⁴ Twenty-three of these are local government SNIDs; two are special residential SNIDs; and one is classified as a property owners’ association SNID.

SB 1508 Safe Neighborhood Improvement District Revolving Loan Program

SB 1508, which is linked to SB 1510, creates the Safe Neighborhood Improvement District Revolving Loan Program. Under the program, the DLA may provide loan guarantees, purchase

¹ See s. 163.502(3), F.S.

² Section 163.5055(1)(a), F.S.

³ See ss. 163.506-163.512, F.S.

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

loan insurance, and refinance local debt through the issuance of new loans for projects that are in the plans of a SNID. The DLA must set aside 15 percent of the amounts credited to the Safe Neighborhood Improvement District Revolving Loan Trust Fund for small SNIDs.

In order to be eligible for a loan under the program, the qualified electors of the SNID must approve the use of revolving loans by referendum.

The bill also provides for audits of the loan projects upon completion, the investment of unused funds, and a process by which to handle defaults of the loan projects.

The DLA must prepare a report at the end of each fiscal year which details the financial assistance provided, service fees collected, interest earned, and loans outstanding and provide the report to the appropriations committees in the Senate and the House of Representatives.

III. Effect of Proposed Changes:

Section 1 creates the Safe Neighborhood Improvement District Revolving Loan Trust Fund within the Department of Legal Affairs to provide loans to safe neighborhood improvement districts that meet the criteria established under s. 163.5161, F.S., for projects contained in crime prevention plans submitted by such districts.

Notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S., any balance in the trust fund at the end of any fiscal year must remain in the trust fund at the end of the year and must be available for carrying out the purposes of the trust fund.

In accordance with s. 19(f)(2), Art. III of the State Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2023. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

Section 2 provides that this act shall take effect on the same date that SB 1508 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1508 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:

Article III, s. 19(f)(1) of the State Constitution requires a bill that creates or re-creates a trust fund to pass by three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 163.5162 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.)

CS by Community Affairs on April 2, 2019:

The committee substitute makes a technical amendment to reference SB 1508.

B. Amendments:

None.



498178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Simmons) recommended the following:

Senate Amendment

Delete line 34
and insert:
SB 1508 or similar legislation takes effect, if such legislation

COMMITTEE: Community Affairs
ITEM: SB 1510
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
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RCS=Replaced by Committee Substitute
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TP=Temporarily Postponed
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WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1500

INTRODUCER: Environment and Natural Resources Committee and Senator Simmons

SUBJECT: Right of Entry

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.	Peacock	Yeatman	CA	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1500 releases the right of entry to any interest in phosphate, minerals, and metals, or any interest in petroleum, reserved for a local government, water management district, or other agency of the state, for any parcel that is or has ever been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

II. Present Situation:

Right of Entry Under Section 270.11, F.S.

Right of Entry

In Florida, surface property rights can be severed from subsurface rights to the minerals and oil underneath the land.¹ Once these rights are severed they may be sold or conveyed separately by their respective owners.² Despite the separate ownership, the owner of the oil and mineral rights generally has an implied easement to enter onto the surface property to explore for and extract

¹ *Noblin v. Harbor Hills Dev., L.P.*, 896 So. 2d 781, 783 (Fla. Dist. Ct. App. 2005)(stating that a reservation or grant of oil and mineral rights reflects an intent on the part of the parties to sever the surface estate from the underlying mineral estate and create two estates); The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 1-2 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited Mar. 18, 2019).

² 58 C.J.S. Mines and Minerals § 207.

the oil and minerals found underneath, so long as there is not unreasonable injury to the surface property.³ This right to enter onto the surface property and develop the resources below is known as a “right of entry.”⁴

Board of Trustees of the Internal Improvement Trust Fund

In 1855, the Board of Trustees of the Internal Improvement Trust Fund was created as a state agency.⁵ The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of the state.⁶ The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.⁷ The Department of Environmental Protection (DEP) performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.⁸ Serving as staff for the Board of Trustees, DEP’s Division of State Lands carries out environmental management and stewardship activities for more than 12 million acres of public lands.⁹

Sale of Public Lands in Florida

Since 1911, in all contracts and deeds for the sale of land by the Board of Trustees, Florida law has reserved for the Board of Trustees ownership of three-fourths of all phosphate, minerals, and metals, and half of all petroleum, that is or may be under the land that was sold, with the privilege to mine and develop those resources.¹⁰ In 1986, the Legislature expanded this reservation of rights, so that “any local government, water management district, or other agency of the state” that sells land would also own such subsurface rights to the minerals and petroleum.¹¹ Also in 1986, the Legislature added a provision releasing any right of entry that the Board of Trustees and the State Board of Education have relating to the mineral and petroleum

³ *Noblin*, 896 So. 2d at 783-785 (stating that a grant or reservation of oil and mineral rights implies an easement for ingress and egress to explore for and remove the oil and minerals found on or underneath the surface estate); see *P & N Inv. Corp. v. Fla. Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. Dist. Ct. App. 1968)(stating that, “[w]hen the surface estate is severed from the mineral estate, the mineral estate is the dominant estate and, therefore, the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals, but he cannot so abuse the surface estate so as unreasonably to injure or destroy its value and is answerable to damages to the owners of the surface estate for any unreasonable injuries done”).

⁴ Section 704.05(1), F.S.

⁵ DEP, *History of State Lands*, <https://floridadep.gov/lands/lands-director/content/history-state-lands> (last visited Mar. 18, 2019).

⁶ Sections 253.01-253.03, F.S.

⁷ FLA. CONST. art. IV, s. 4(f).

⁸ Section 253.002, F.S.

⁹ DEP, *Division of State Lands*, <https://floridadep.gov/lands/> (last visited Mar. 18, 2019).

¹⁰ Section 270.11, F.S.; *Trustees of Tufts Coll. v. Triple R. Ranch, Inc.*, 275 So. 2d 521, 532 (Fla. 1973)(taking notice that the reservation of rights existed in Chapter 6159, Acts of 1911); see ss. 253.03(3) and 253.62(1), F.S. Exceptions to the reservation requirement exist in the conveyance of certain lands or when lands inure to the Board of Trustees from other state agencies.

¹¹ Chapter 86-257, Laws of Fla. This law also granted local governments, water management districts, and agencies of the state the right to sell or release these reserved interests in any parcel of land; see s. 270.11(3), F.S.

interests on parcels less than 20 acres and under the same ownership.¹² However, no such release of the right of entry was made for the mineral and petroleum rights reserved for the local governments, water management districts, and state agencies.

The Board of Trustees, the State Board of Education, a local government, a water management district, or any other state agency may, at its discretion, sell or release any of these reserved mineral or petroleum rights.¹³ Such sale or release requires the proper application of the owner, or petition of the purchaser, along with a statement of reasons justifying such sale or release.¹⁴ The law also requires that any state agency, except a water management district, which receives royalties for parcels shall remit any such moneys into the General Revenue Fund, unless otherwise provided by law.¹⁵ In the context of minerals and petroleum, the term royalties pertains to the minerals or petroleum that are produced or the profits derived by their sale.¹⁶

Issues for Property Owners

Rights of entry for mineral or petroleum rights can cause issues for the owners of the surface property, as it can constitute a defect in the title, the legal rights of ownership to the property.¹⁷ For a property to have marketable title, it must be free and clear of all estates, interests, claims, or charges.¹⁸ In real estate transactions, the purchaser of a property will commonly obtain title insurance. Title insurance is essentially an agreement protecting against defects in title to real property, usually issued to the buyer of a property by the title insurance company that conducted the title search.¹⁹

In general, when a party is pursuing title insurance for a property subject to a right of entry pursuant to a reservation under s. 270.11 F.S., there must either be a release of the right of entry or an exception for the reservation in the title policy.²⁰ The reservations can create special problems for title insurers, who will often request releases of the land being sold.²¹ Even if a property subject to a right of entry is not zoned for drilling or mining activities, title insurance companies will not rely upon this, because zoning can be changed by the governmental zoning authorities.²² Also, if mortgage lenders see a right of entry as an exception in a title policy, this can be considered a title defect that may hinder a homebuyer's ability to obtain a loan.²³

¹² Section 270.11(2)(b), F.S.; see Ch. 86-205, Laws of Fla.

¹³ Section 270.11(2)(a), (3), F.S.

¹⁴ *Id.*

¹⁵ Section 270.11(4), F.S.

¹⁶ John N. Redding, *Florida Real Property Complex Transactions, Chapter 7: Oil, Gas and Minerals*, 12 (2018).

¹⁷ The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 2-3 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited March 18, 2019).

¹⁸ Section 712.04, F.S.

¹⁹ Black's Law Dictionary, Ninth Edition, *Title Insurance*, 875 (2009).

²⁰ Jana Armstrong, *Florida Real Property Title Examination and Insurance, Chapter 3: Searching For and Examining Title*, 27 (2016).

²¹ 19 Fla. Prac., *Florida Real Estate* § 5:12 (citing *Van Arsdale v. Dimil Land Co.*, 325 So. 2d 471 (Fla. 4th DCA 1975)).

²² The Barnes Walker Educational Series, *Oil, Gas, and Mineral Rights in Florida: A Guide for Realtors*, 2 (Feb. 2015), available at <https://barneswalker.com/wp-content/uploads/2015/04/Oil-Gas-and-Mineral.pdf> (last visited March 18, 2019).

²³ *Id.* at 2.

To extinguish a right of entry for the statutory oil and mineral rights reserved by Florida's local governments, water management districts, and other state agencies, the purchaser of a property must request written release of the right of entry by the government entity for which it is reserved, or enter an order to quiet title in the circuit court with jurisdiction over the property.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 270.11, F.S., to release the right of entry to any interest in phosphate, minerals, and metals, or any interest in petroleum, reserved for a local government, water management district, or other agency of the state, for any parcel that is or has ever been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

The bill reorganizes subsections (2) and (3) of s. 270.11, F.S., so that subsection (2) authorizes government entities to sell or release any reserved interest and subsection (3) releases the right of entry.

Section 2 states that the act shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁴ Section 65.011, F.S. See also DEP, *FAQ: Use of State-Owned Land*, <https://floridadep.gov/lands/lands/content/faq-use-state-owned-land> (last visited March 20, 2019). An application need not be sent to the Division of State Lands for releasing a right of entry and exploration for oil and mineral reservations on parcels less than 20 acres, because the rights of entry for the lands held by the Board of Trustees have been released in statute.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Releasing the rights of entry as specified in the bill would presumably remove implied easements for mineral and petroleum rights for many properties in the state. In some circumstances, this could eliminate title defects and improve the ownership or value of the property on the surface, including improved success with processes such as real estate transactions, obtaining title insurance, and securing mortgage loans. Also, to the extent property owners incur costs by requesting releases from government entities or filing actions in court to obtain marketable title, releasing the rights of entry may avoid costs for private property owners. Therefore, this bill may have an indeterminate, positive impact on the private sector.

C. Government Sector Impact:

The bill would release the right of entry retained by local governments, water management districts, and state agencies for oil and mineral rights in the state. Without such right of entry, these government entities may be unable to develop valuable resources the rights to which were reserved for them pursuant to s. 270.11, F.S. This release of property rights could potentially result in a loss of value for local and state government entities, depending on the mineral and oil rights reserved for such entities on contiguous parcels of less than 20 acres under the same ownership. Therefore, the bill may have an indeterminate, negative fiscal impact on the government sector.

To the extent state or local government entities incur costs in responding to requests from property owners to release rights of entry on properties less than 20 acres, releasing the rights of entry may avoid such costs by eliminating the need for processing such requests. Therefore, the bill may have an indeterminate, positive fiscal impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 270.11 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.)

CS by Environment and Natural Resources Committee on March 26, 2019:

The committee substitute:

- Amends the title to say that the act relates to “right of entry” instead of “mineral rights,” and that the act is releasing a right of entry instead of releasing mineral rights; and
- Renumbers the subsections in s. 270.11, F.S.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/12/19
Meeting Date

1500
Bill Number (if applicable)

Topic Right of Entry

Amendment Barcode (if applicable)

Name Michael Dobson

Job Title Attorney

Address 215 S Monroe Street

Phone (850) 999-4100

City Tallahassee State FL Zip 32301

Email mdobson@tdseummed.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Real Property, Probate and Trust Law Section of Florida Bar

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.

This form is part of the public record for this meeting.

By the Committee on Environment and Natural Resources; and
Senator Simmons

592-03514-19

20191500c1

A bill to be entitled

An act relating to right of entry; amending s. 270.11,
F.S.; releasing right of entry reserved by a local
government, water management district, or other agency
of the state for specified parcels of property;
providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsection
(3) of section 270.11, Florida Statutes, are amended to read:

270.11 Contracts for sale of public lands to reserve
certain mineral rights; prohibition on exercise of right of
entry in certain cases.—

(2)

(b) A local government, a water management district, or an
agency of the state may, at its discretion, sell or release
reserved interest in any parcel of land, except that such sale
or release shall be made upon petition of the purchaser for such
interest and with a statement of reasons justifying such sale or
release.

~~(3) The right of entry in respect to any interest in
phosphate, minerals, and metals or any interest in petroleum
heretofore or hereafter reserved in favor of the Board of
Trustees of the Internal Improvement Trust Fund, or the State
Board of Education, a local government, a water management
district, or other agency of the state is hereby released for as
to any parcel of property that is, or ever has been, a
contiguous tract of less than 20 acres in the aggregate under~~

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03514-19

20191500c1

the same ownership.

~~(3) A local government, water management district, or
agency of the state may, at its discretion, sell or release
reserved interest in any parcel of land, except that such sale
or release shall be made upon petition of the purchaser for such
interest and with a statement of reasons justifying such sale or
release.~~

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

COMMITTEE: Community Affairs
ITEM: CS/SB 1500
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 604

INTRODUCER: Senator Pizzo

SUBJECT: Registered Contractor Licensing

DATE: March 28, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof	IT	Favorable
2. Toman	Yeatman	CA	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 604 extends until November 1, 2021, the deadline for eligible electrical contractors, electrical specialty contractors, and alarm system contractors who are registered with the Department of Business and Professional Regulation (DBPR) and authorized to work in local jurisdictions, to apply for a certificate of competency from DBPR. Upon certification, such contractors may engage in their trade category throughout the state, with no geographic limitation. A similar deadline extension expired in 2015. The DBPR estimates there are approximately 1,501 currently registered contractors in the state who may be eligible to apply for certification during the extension period.¹ No mandatory licensure requirement is created by the availability to qualify as a certified contractor.

II. Present Situation:

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.² The Electrical Contractors' Licensing Board (board) in the DBPR implements Part II of ch. 489, F.S.³

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits, or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.⁴ The term also includes any person, firm, or corporation that engages in the business

¹ See 2019 Agency Legislative Bill Analysis (Department of Business and Professional Regulation) for SB 604, Feb. 18, 2019 (on file with Senate Committee on Innovation, Industries, and Technology) at page 4.

² See s. 489.501, F.S.

³ See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the board.

⁴ See s. 489.505(12), F.S.

of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁵

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.⁶ The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁷ An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I;” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.⁸

The terms “registered alarm system contractor,” and “registered electrical contractor” mean those contractors who have registered with DBPR as part of meeting competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.⁹

The term “certification” means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.¹⁰ When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the scope of work that may be undertaken, without any mandatory licensure requirement.¹¹ The term “certified electrical contractor” means an electrical contractor who possesses a certificate of competency.

To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.

Unless an exemption applies, the term “contracting” means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of the work that may be performed by electrical or alarm system contractors.¹² The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the

⁵ *Id.*

⁶ See s. 489.505(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ See ss. 489.505(16), (21), and (22), F.S.

¹⁰ See ss. 489.505(4), (5), and (6), F.S.

¹¹ See s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for “root mean square,” a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Mar. 28, 2019).

¹² See s. 489.505(9), F.S.; see also, ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24) for the persons and types of work that are exempted from the term “contracting.”

offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.¹³

The term “specialty contractor” means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.¹⁴

Section 489.514, F.S., requires the board to issue certification allowing an electrical, electrical specialty or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee; and
- Evidence that he or she qualifies for the certification in a trade category based on:
 - Having a valid registered local license;
 - Passing an approved written examination;
 - Having a minimum of five years’ contracting experience in the applicable trade category (with an active license and excluding probationary periods);
 - Never having had a contractor’s license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
 - Meeting all required insurance and financial responsibility requirements.¹⁵

The board has established a \$200 fee for applications for certification of registered contractors.¹⁶

III. Effect of Proposed Changes:

SB 604 extends until November 1, 2021, the deadline for eligible electrical contractors, electrical specialty contractors, and alarm system contractors who are registered with the Department of Business and Professional Regulation (DBPR) and authorized to work in local jurisdictions, to apply and qualify for a certificate of competence. Once certified, such contractors may engage in their trade category throughout the state, with no geographic limitation. A similar extension expired in 2015.¹⁷ The DBPR estimates there are approximately 1,501 currently registered contractors in the state and approximately 303 inactive registered contractors who may be eligible to apply for certification during the extension period.¹⁸

The bill takes effect July 1, 2019.

¹³ See s. 489.505(9), F.S.

¹⁴ See s. 489.505(19), F.S.

¹⁵ See s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers’ compensation insurance or an acceptable exemption issued by DBPR, public liability and property damage insurance in amounts determined by the board, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

¹⁶ See s. 489.109, F.S., and Fla. Admin. Code R. 61G6-8.001 (2019).

¹⁷ See ch. 2013-193, s. 11, Laws of Florida, which extended the deadline to apply for certification to November 1, 2015 from November 1, 2004.

¹⁸ See 2019 Agency Legislative Bill Analysis (Department of Business and Professional Regulation) for SB 604, Feb. 18, 2019 (on file with Senate Committee on Innovation, Industries, and Technology) at page 4.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Registered contractors may voluntarily choose to apply for certification for the required \$200 fee, if engaging in their trade category throughout the state, with no geographic limitation.

C. Government Sector Impact:

The DBPR estimates as many as 1,501 active registered contractors and 303 inactive registered contractors have the required experience and may voluntarily choose to apply and qualify for a certificate of competence.¹⁹ According to the DBPR, if all such eligible contractors apply for certification and pay the required \$200 application fee, the total associated fees collected could be approximately \$360,800.²⁰

VI. Technical Deficiencies:

None.

¹⁹ *Id.*

²⁰ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.514 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.

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

By Senator Pizzo

38-01556-19

2019604__

A bill to be entitled

An act relating to registered contractor licensing; amending s. 489.514, F.S.; extending the date by which an applicant must make application for a license to be grandfathered; providing an effective date.

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

Section 1. Section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12);

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-01556-19

2019604__

electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of \$500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2021 ~~2015~~, to be licensed pursuant to this section.

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

COMMITTEE: Community Affairs
ITEM: SB 604
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1476

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Citizens Property Insurance Corporation

DATE: March 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1476 provides that Citizens Property Insurance Corporation (Citizens) may not impose a rate increase in any single year in excess of 5 percent, except for sinkhole coverage, for any single policy that covers property located in a county:

- Where the Office of Insurance Regulation determines there is not a reasonable degree of competition; and
- That has 25 percent or more of county land designated as an area of critical state concern.

The reduced rate cap begins January 1, 2020, and expires January 1, 2022.

This is an exception from current law, which applies to all counties and prohibits Citizens from imposing a rate increase in any single year in excess of 10 percent for any single policy, except for sinkhole coverage.

Currently, Citizens policyholders who reside in Monroe County would meet the criteria for the reduced rate cap. The bill would reduce premiums paid to Citizens by an estimated \$2.95 million over the 2 years the 5 percent rate cap is in effect.¹

The effective date of the bill is July 1, 2019.

¹ Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.² Citizens is not a private insurance company.³ Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors⁴ that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁵ Assets may not be commingled or used to fund losses in another account.⁶

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁷

² Admitted market means insurance companies licensed to transact insurance in Florida.

³ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

⁴ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

⁵ The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁶ Section 627.351(6)(b)2b., F.S.

⁷ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁸ Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Board of Governors

Citizens operates under the direction of a nine member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints three members, one of whom serves as a consumer representative.⁹ Board members serve 3 year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.¹⁰ Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because half of the board members are required by law to have insurance expertise in order to sit on the board.¹¹

Citizens Glide Path Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.¹² From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.¹³ The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor

⁸ Section 10, ch. 2013-60 L.O.F.

⁹ s. 627.351(6)(c)4.a., F.S.

¹⁰ Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

¹¹ Section 627.351(6)(c)4.a., F.S.

¹² Among the factors the Office of Insurance Regulation considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

¹³ Section 627.351(6)(n)6., F.S.

added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.¹⁴ The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the OIR, give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

¹⁴ Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.¹⁵ In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.¹⁶

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.¹⁷ Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of \$700,000 or more are not eligible for coverage by the corporation.¹⁸

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of \$1 million or less in Miami-Dade and Monroe counties, after the OIR determined there was not a reasonable degree of competition in these counties (i.e. the counties were deemed non-competitive).¹⁹

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium associations, homeowner associations, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Areas of Critical State Concern

The Areas of Critical State Concern Program was created by the Florida Environmental Land and Water Management Act of 1972.²⁰ The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. Section 380.05, F.S., allows the Florida Administration Commission²¹ to designate areas that contain resources of statewide significance as an Area of Critical State Concern.

¹⁵ Section 627.351(6)(c)5., F.S.

¹⁶ Section 627.351(6)(c)5., F.S.

¹⁷ Section 627.351(6)(a)3., F.S.

¹⁸ *Id.*

¹⁹ *Id.* and Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

²⁰ Florida Department of Economic Opportunity, Areas of Critical State Concern Program, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited March 28, 2019).

²¹ Section 380.031(1), F.S., "Administration Commission" or "commission" means the Governor and the Cabinet.

Florida Keys Area of Critical State Concern

The Florida Keys Area of Critical State Concern, designated in 1974, includes the Village of Islamorada, City of Marathon, City of Layton, City of Key Colony Beach, and unincorporated Monroe County. In 1984, the City of Key West was also designated an Area of Critical State Concern. Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive plans and land development regulations. Annually, the Florida Department of Economic Opportunity (DEO) is required by s. 380.0552(4)(b), F.S., to submit a written report to the Florida Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules.

Big Cypress Area of Critical State Concern

The Big Cypress Area of Critical State Concern includes portions of Collier, Mainland Monroe, and Miami-Dade Counties and was designated by the Big Cypress Conservation Act of 1973²² and s. 380.055, F.S. The area is approximately 860,000 acres of which 729,000 acres are in the Big Cypress National Preserve. The purpose for designation was to "conserve and protect the natural, environmental and economic resources and the scenic beauty of the Big Cypress Area, including the proposed Federal Big Cypress National Fresh Water Reserve, the Everglades National Park, and ecologically related wetlands, estuarine fisheries, and the fresh water aquifer, and ecologically related areas."²³

III. Effect of Proposed Changes:

The bill would reduce the current Citizens rate cap of no more than a 10 percent increase, per policy, per year, to no more than a 5 percent increase, per policy, per year, in a county where the Office of Insurance Regulation determines there is not a reasonable degree of competition and the county has 25 percent or more of land designated as an area of critical state concern. Sinkhole coverage is excluded from the rate caps. The reduced rate cap for these areas begin January 1, 2020, and expires January 1, 2022.

Currently, the OIR has determined Miami-Dade and Monroe County to be noncompetitive for purposes of determining eligibility for Citizens.²⁴ Monroe County has more than 25 percent of county land designated as an Area of Critical State Concern. Thus, Monroe County is currently the only county that would qualify for the reduced rate cap of 5 percent.

The effective date of the bill is July 1, 2019.

²² Florida Department of Economic Opportunity, Big Cypress Area, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-big-cypress-swamp> (last visited March 28, 2019).

²³ Fla. Admin. Code R. 28-25.002

²⁴ Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Citizens policyholders in Monroe County will have potential rate increases capped at no more than 5 percent per year rather than the current cap of no more than 10 percent per year. Representatives from Citizens estimate the bill will reduce premiums paid to Citizens by an estimated \$2.95 million over the 2 years the 5 percent rate cap is in effect.²⁵

Should Citizens run a deficit for failing to collect enough premium to pay for losses, surcharges and assessments could be needed. If needed, they would be levied to Citizens policyholders and all lines of private insurance excluding medical malpractice and workers compensation.

C. Government Sector Impact:

The current percent of increased rate needed for Citizens to be actuarially sound in Monroe County is 47.2 percent.²⁶

²⁵ Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

²⁶ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 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 Banking and Insurance on March 25, 2019:

The CS applies the 5 percent rate cap to counties with 25 percent or more of land designated as an area of critical state concern. The CS reduces from 4 years to 2 years the time in which the 5 percent rate cap would be in effect.

- B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4-2-19

Bill Number (if applicable) 1476

Topic _____

Amendment Barcode (if applicable) _____

Name JERRY PAUL

Job Title _____

Address _____
Street _____

Phone 850-386-5267

City _____ State _____ Zip _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing "FAIR INSURANCE RATES IN MOBILE (FIRM)"

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.

This form is part of the public record for this meeting.

By the Committee on Banking and Insurance; and Senator Flores

597-03482-19

20191476c1

A bill to be entitled

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties; providing for future expiration; providing an effective date.

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

Section 1. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

597-03482-19

20191476c1

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6.a. Beginning ~~on or after~~ January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under

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subparagraph 1., the corporation shall annually implement a rate increase ~~that which~~, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

b. Beginning January 1, 2020, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation and does not exceed 5 percent for any single policy issued by the corporation to an insured located in a county where the office has determined there is not a reasonable degree of competition and where 25 percent or more of the county land is designated as an area of critical state concern under s. 380.05, excluding coverage changes and surcharges. This sub-subparagraph expires January 1, 2022.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 1476
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1666

INTRODUCER: Community Affairs Committee; Environment and Natural Resources Committee; and Senator Flores

SUBJECT: Vessels

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Toman	Yeatman	CA	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1666:

- Requires a person to have either a boater safety identification card or a temporary certificate before renting and operating a vessel with a 10 horsepower or higher engine or electronic equivalent of such engine.
- Establishes criteria for obtaining a temporary certificate which is valid for 90 days.
- Provides that boating safety identification cards and temporary certificates may be issued in a digital, electronic or paper format.
- Authorizes the Fish and Wildlife Conservation Commission (FWC) to appoint agents to administer qualifying boating safety education and temporary certificate requirements.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires the FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited for specified vessels.
- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.

- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.
- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal. Funds not granted to local governments by a certain date in the fiscal year may be used by the FWC to remove derelict vessels.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

II. Present Situation:

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.¹ Mooring is accomplished through the utilization of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.³

State Regulation of the Anchoring or Mooring of Vessels

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.⁴ Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from

¹ Section 327.02, F.S., defines the term "vessel" to include 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.

² Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf> (last visited Mar. 29, 2019).

³ Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 31, 2016), available at <http://www.boatus.com/gov/assets/pdf/fwc-2016-anchoring-and-mooring-report.pdf> (last visited Mar. 29, 2019).

⁴ Section 253.03(7), F.S.

interfering with commerce or the transitory operation of vessels through navigable water.⁵ The BOT has not adopted rules relating to the anchoring of vessels on the waters of the state.

State law prohibits a person from anchoring a vessel in several specific scenarios, including:

- In a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel;⁶
- Between one-half hour after sunset and one-half hour before sunrise in certain designated anchoring limitation areas;⁷ and
- If the nearest approach of the vessel or floating structure is within a certain distance of a marina, boat ramp, boatyard, or other vessel launching or loading facility; a superyacht repair facility; or the marked boundary of a public mooring field.⁸

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.⁹ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.¹⁰

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹¹ However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.¹²

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.¹³

⁵ *Id.*; see Fla. Admin. Code ch. 18-21.

⁶ Section 327.44(2), F.S.

⁷ Section 327.4108, F.S.

⁸ Section 327.4109, F.S.

⁹ Section 373.118, F.S.; Fla. Admin. Code R. 62-330.420(1).

¹⁰ Fla. Admin. Code R. 62-330.420.

¹¹ Section 327.60(3), F.S., see also s. 327.02(14) and (22) for definitions of the terms “floating structure” and “live-aboard vessel.”

¹² Section 327.60(2)(f), F.S.

¹³ Section 823.11(1)(b), F.S.

It is unlawful to store, leave, or abandon a derelict vessel in Florida.¹⁴ A person found in violation of this law commits a first degree misdemeanor.¹⁵ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$50,000 per day.¹⁶ Each day during any portion of which the violation occurs constitutes a separate offense.¹⁷

Removal of Derelict Vessels

The Division of Law Enforcement of the FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.¹⁸

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.¹⁹ The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.²⁰ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.²¹

FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of the state, if funds are appropriated for the grant program.²² Grants are awarded based on a set of criteria outlined in FWC rules.²³ Removal or relocation of a vessel on private property is not eligible for grant funding.²⁴

¹⁴ Section 823.11(2), F.S.

¹⁵ A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

¹⁶ Section 376.16(1), F.S.

¹⁷ *Id.*

¹⁸ Section 327.70 F.S.; see section 943.10(1), F.S., which defines “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. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁹ Section 327.44(3), F.S.

²⁰ Section 327.44(5), F.S.

²¹ Section 705.103(4), F.S.

²² Section 376.15, F.S.

²³ Rule 68-1.003, F.A.C.

²⁴ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 15, 2019).

At-Risk Vessels

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.²⁵ A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.²⁶

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.²⁷

Boating Safety Identification Cards

A person born on or after January 1, 1988 who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.²⁸ To obtain a card, a person must complete an approved boating safety course.²⁹ There are several courses available at various price points ranging from free up to \$30.³⁰ The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.³¹ The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 12 months.³²

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt 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

²⁵ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

²⁶ Section 327.4107, F.S.

²⁷ Section 327.73(1)(aa), F.S.

²⁸ Section 327.395(1), F.S.

²⁹ FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Mar. 29, 2019). This card is not a boating license, it is a certification that the person named on the card has successfully completed the required boating safety course.

³⁰ FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Mar. 29, 2019).

³¹ Section 327.395(1), F.S.

³² Section 327.395(5), F.S.

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 requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course 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.
- Is exempted by FWC rule.³³

Penalties for Boating Infractions

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and penalties.³⁴ The penalties are:

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third offense, up to a maximum of \$250.

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.³⁵

In addition to civil penalties, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second-degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.³⁶

No-Discharge Zones

A no-discharge zone is a designated body of water that prohibits the discharge of treated and untreated boat sewage.³⁷ Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility.

A state may initiate the process to establish a no-discharge zone if:

³³ Section 327.395(6), F.S.

³⁴ Section 327.73(1)(z) and (bb), F.S.

³⁵ Section 327.73(1)(s), F.S.

³⁶ Sections 775.082 and 775.083, F.S.

³⁷ U.S. Environmental Protection Agency, *Vessel Sewage Discharges: No-Discharge Zones*, <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs> (last visited Mar. 29, 2019).

- The state determines that the water body requires greater environmental protection than the current federal standards allow and EPA finds that adequate pump-out facilities are available;
- The EPA, upon application by the state, determines that the protection and enhancement of the water body requires establishment of a no-discharge zone; or
- The area is within a drinking water intake zone.³⁸

Currently, Florida has three designated no-discharge zones. These are Destin Harbor, the city of Key West waters, and the state waters within the Florida Keys National Marine Sanctuary.³⁹

Vessel Registration Fees

A portion of the state vessel registration fees for recreational vessels are distributed to county governments.⁴⁰ Of the portion designated for counties, \$1 is remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and \$1 is remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities, with priority consideration given to counties with more than 35,000 registered vessels.⁴¹ The following chart shows the base registration fee and portion of the fee that is remitted to the county.

Vessel Class ⁴²	Base Registration Fee	Portion of Fee Remitted to County
A-1	\$5.50	N/A
A-2	\$16.25	2.85
1	\$28.75	8.85
2	\$78.25	32.85
3	\$127.75	56.85
4	\$152.75	68.86
5	\$189.75	86.85

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.⁴³ The Governor may designate up

³⁸ *Id.*

³⁹ U.S. EPA, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Mar. 29, 2019).

⁴⁰ Section 328.72(1), F.S.

⁴¹ Section 328.72(15), F.S. Section 206.606, F.S., establishes guidelines for the distribution and transfer of certain funds to the Marine Resources Conservation Trust Fund and also authorizes the FWC to adopt rules to administer a Florida Boating Improvement Program and provide for local public boating-related activities.

⁴² In general, the vessel class designates various length increments of vessels which range from less than 12 feet in length (class A1) up to 110 feet or more in length (class 5).

⁴³ Section 288.0656, F.S.

to three RAOs, which establishes each region as a priority assignment for Rural and Economic Development Initiative (REDI) agencies.⁴⁴

Undisbursed Appropriations Balances

Section 216.301(1), F.S., provides as of June 30th of each year, for appropriations for operations only, each department and the judicial branch shall identify in the state's financial system any incurred obligation which has not been disbursed, showing in detail the commitment or to whom obligated and the amounts of such commitments or obligations. Any appropriation not identified as an incurred obligation effective June 30th shall revert to the fund from which it was appropriated and shall be available for reappropriation by the Legislature.

III. Effect of Proposed Changes:

The bill requires a person to have either a boater safety identification card or a temporary certificate before renting and operating a vessel with a 10 horsepower or higher engine or electronic equivalent of such engine. Criteria for obtaining the temporary, 90-day certificate are established which replace a current 12-month temporary option. The bill also authorizes the Fish and Wildlife Conservation Commission (FWC) to appoint agents to administer qualifying boating safety education and temporary certificate requirement criteria. The agents are directed to collect the required fees associated with the credentials and are allowed to charge and keep a service fee for their efforts. Both the FWC and the agents may issue these safety credentials in digital, electronic or paper format.

The bill defines “long-term stored vessel” to mean a vessel on the waters of the state which is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and which has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period. The definition is applicable only to the study required under the bill.

The bill requires the Fish and Wildlife Conservation Commission (FWC), contingent upon appropriation, to conduct, for no longer than two years, a study of the impacts of long-term stored vessels on local communities and the state. FWC must submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed. The bill clarifies that the subsection governing the study expires January 1, 2024. The study must:

- Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state;

⁴⁴ Section 288.0656(7)(a), F.S. The Northwest Rural Area of Opportunity includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, Walton, and Washington Counties and portions of Walton County; the South Central Rural Area of Opportunity includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties and portions of Collier and Palm Beach Counties; the North Central Rural Area of Opportunity includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties. See Department of Economic Opportunity, Rural Areas of Opportunity, available at <http://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Mar. 29, 2019)

- Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels anchored within public mooring fields on the local and state economies, public safety, and the environment during and after a significant tropical storm or hurricane event; and
- Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts.

The bill authorizes a county designated as a rural area of opportunity to create a no-discharge zone for freshwater waterbodies within the county's jurisdiction. The bill prohibits treated and untreated sewage discharges within the no-discharge zone from floating structures not capable of being used as a means of transportation, live-aboard vessels, and houseboats. Vessel operators would have to retain their sewage on board for discharge at sea or onshore at a pump out facility. The bill provides that a violation in a no-discharge zone would be a noncriminal infraction, subject to a \$250 civil penalty and declaration that the vessel or floating structure a nuisance and hazard to public safety and health.

The bill authorizes grant funding from the Marine Resources Conservation Trust Fund for the removal of derelict vessels. The bill requires certain amounts to be remitted to the state from the vessel registration fees designated for use by the counties, as follows:

- Class A-2: \$0.25 for each 12-month period registered.
- Class 1: \$2.06 for each 12-month period registered.
- Class 2: \$9.26 for each 12-month period registered.
- Class 3: \$16.45 for each 12-month period registered.
- Class 4: \$20.06 for each 12-month period registered.
- Class 5: \$25.46 for each 12-month period registered.

Undisbursed balances from fees may be reapportioned to fund the Florida Boating Improvement Program or public boating access. Appropriated funds not utilized by local governments for derelict vessel removal by the end of the third quarter in a fiscal year may be used by FWC to remove derelict vessels.

The bill prohibits a person from residing or dwelling on a vessel that has been charged by an officer of FWC or any law enforcement agency as derelict until the vessel is removed from the waters of the state permanently or returned to the waters of the state in a condition that is no longer derelict.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons of any age who *rent* and operate ceratin vessels will have to obtain boater safety identification cards or temporary certificates. Costs for current safety training courses range from free up to \$30.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on state government. The FWC may experience a positive fiscal impact resulting from the issuance of boating citations. However, FWC may also experience increased costs due to increased enforcement efforts, issuing boater safety identification cards to persons who no longer fall under the grandfather provision in current law, and conducting a study on long-term stored vessels.

The bill may have a positive fiscal impact on local governments that are eligible for the derelict vessel removal grant program. A portion of county vessel registration fees will be redirected for deposit into the Marine Resources Conservation Trust Fund.

VI. Technical Deficiencies:

It appears that the reference to s. 206.06, F.S., (estimate of amount of fuel taxes due and unpaid) on line 320 should perhaps instead be s. 206.606, F.S., (distribution of certain proceeds) which is cross-referenced elsewhere in the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.395, 327.4109, 327.60, 327.73, 328.72, 376.15, and 823.11 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 Community Affairs on April 2, 2019:

- Retains the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine but includes vessels with electronic equivalent engines.
- Provides that a person of any age may not *rent* and operate the above motorized vessels without obtaining a boating safety identification card or temporary certificate.
- Establishes criteria for obtaining a temporary certificate which is valid for 90 days.
- Provides that safety identification cards or temporary certificates may be issued in a digital, electronic or paper format.
- Authorizes the FWC to appoint agents to administer qualifying boating safety education and temporary certificate requirements and collect related required fees. Agents are permitted to charge service fees for their efforts.
- Clarifies the types of vessels prohibited from discharging treated and untreated sewage in specified freshwater waterbodies.
- Provides that appropriated funds not utilized by local governments for derelict vessel removal as of a certain date each year may be used by FWC to remove derelict vessels.

CS by Environment and Natural Resources Committee on March 26, 2019:

- Deletes the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited.
- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.
- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.

- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

B. Amendments:

None.

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



844894

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
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The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 327.395, Florida Statutes, is amended to
read:

327.395 Boating safety education ~~identification cards.~~—

(1) A person born on or after January 1, 1988, may not
operate a vessel powered by a motor of 10 horsepower or greater,
including the electric equivalent of 10 horsepower or greater,



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11 and a person of any age may not rent and operate such a vessel,
12 unless such person has in his or her possession aboard the
13 vessel photographic identification and a boating boater safety
14 identification card issued by the commission, ~~or~~ a state-issued
15 identification card or driver license indicating possession of
16 the boating boater safety identification card, or photographic
17 identification and a temporary certificate issued or approved by
18 the commission, which shows that he or she has:

19 (a) Completed a commission-approved boating safety boater
20 education course that meets the minimum requirements 8-hour
21 ~~instruction requirement~~ established by the National Association
22 of State Boating Law Administrators; or

23 ~~(b) Passed a course equivalency examination approved by the~~
24 ~~commission; or~~

25 ~~(c) Passed a temporary certificate examination developed or~~
26 ~~approved by the commission.~~

27 (2)(a) A Any person may obtain a boating boater safety
28 identification card by successfully completing a boating safety
29 education course that meets ~~complying with~~ the requirements of
30 this section and rules adopted by the commission pursuant to
31 this section.

32 (b) A person may obtain a temporary certificate by passing
33 a temporary certificate examination that meets the requirements
34 of this section and rules adopted by the commission pursuant to
35 this section.

36 (3) Any commission-approved boating boater education ~~or~~
37 ~~boater~~ safety education course, ~~course equivalency examination~~
38 ~~developed or approved by the commission,~~ or temporary
39 certificate examination developed or approved by the commission



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must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course, ~~course~~ ~~equivalency examination~~, or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must charge the \$2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a \$1 service fee.

(5) A boating safety ~~An~~ identification card issued to a person who has completed a boating safety education course ~~or a~~ ~~course equivalency examination~~ is valid for life. A temporary certificate ~~card~~ issued to a person who has passed a temporary certification examination is valid for 90 days after ~~12 months~~ ~~from~~ the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety ~~an~~ identification card in compliance with this section, who is 18 years of age or older, and who is attendant to the operation of the vessel and responsible for the safe operation of the vessel



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and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety boater education course or equivalency examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators of subsection (1).

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing the requirements of paragraph (1)(a) ~~or paragraph (1)(b)~~ and has a photographic identification card and a boating safety boater education certificate available for inspection as proof of having completed a boating safety boater education course. The boating safety 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.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of subsection (1) commits a noncriminal infraction, punishable as provided in s. 327.73.

~~(8) The commission shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.~~



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98 ~~(8)-(9)~~ The commission shall institute and coordinate a
99 statewide program of boating safety instruction and
100 certification to ensure that boating safety courses and
101 examinations are available in each county of the state. The
102 commission may appoint agents to administer the boating safety
103 education course or temporary certificate examination and may
104 authorize the agents to issue temporary certificates in digital,
105 electronic, or paper format. The agents shall charge and collect
106 the \$2 fee required in subsection (9) for each temporary
107 certificate, which must be forwarded to the commission. The
108 agent may charge and keep a \$1 service fee.

109 ~~(9)-(10)~~ The commission is authorized to establish and to
110 collect a \$2 ~~examination~~ fee for each card and certificate
111 issued pursuant to this section ~~to cover administrative costs.~~

112 ~~(10)-(11)~~ The commission shall design forms and is
113 ~~authorized to~~ adopt rules pursuant to chapter 120 to implement
114 the provisions of this section.

115 ~~(11)-(12)~~ This section may be cited as the "Osmany 'Ozzie'
116 Castellanos Boating Safety Education Act."

117 Section 2. Subsection (6) is added to section 327.4109,
118 Florida Statutes, to read:

119 327.4109 Anchoring or mooring prohibited; exceptions;
120 penalties.—

121 (6) (a) As used in this subsection, and applied only for the
122 purposes of the study required by this subsection and not for
123 any other purposes, the term "long-term stored vessel" means a
124 vessel on the waters of the state which is not under the
125 supervision and control of a person capable of operating,
126 maintaining, or moving it from one location to another and which



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has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period.

(b) The commission shall conduct, or contract with a private vendor to conduct, for not longer than 2 years, a study of the impacts of long-term stored vessels on local communities and this state.

(c) The study shall:

1. Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state.

2. Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels moored within public mooring fields on the local and state economies, public safety, and the environment during and after significant tropical storm and hurricane events.

3. Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside public mooring fields for more than 30 days to mitigate any identified negative impacts to local communities and this state.

(d) The commission shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 6 months after the study is completed.

(e) This subsection is contingent upon appropriation by the Legislature.

(f) This subsection expires January 1, 2024.



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Section 3. Present paragraphs (c) and (d) of subsection (4) of section 327.60, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

327.60 Local regulations; limitations.—

(4)

(c) A county designated as a rural area of opportunity may create a no-discharge zone for freshwater waterbodies within the county's jurisdiction to prohibit treated and untreated sewage discharges from floating structures not capable of being used as a means of transportation, live-aboard vessels, and houseboats. Within no-discharge zone boundaries, operators of such floating structures, live-aboard vessels, and houseboats shall retain their sewage on shore for discharge at a pumpout facility or on board for discharge more than 3 miles off the coast in the Atlantic Ocean or more than 10 miles off the coast in the Gulf of Mexico. Violations of this paragraph are punishable as provided in s. 327.53(6) and (7).

Section 4. Paragraph (r) of subsection (1) of section 327.73, Florida Statutes, is amended, and paragraph (s) of that subsection and subsection (4) of that section are reenacted, to read:

327.73 Noncriminal infractions.—

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

(r) Section 327.53(4), (5), and (7), relating to marine sanitation, and section 327.60, relating to no-discharge zones, for which the civil penalty is \$250.

(s) Section 327.395, relating to boater safety education.



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

(4) Any person charged with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 30 days of the date of receiving the citation; or,

(b) If he or she has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he or she shall be deemed to have admitted the noncriminal infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. If a person who is cited for a violation of s. 327.395 can show a boating safety identification card issued to that person and valid at the time of the citation, the clerk of the court may dismiss the case and



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may assess a dismissal fee of up to \$10. If a person who is cited for a violation of s. 328.72(13) can show proof of having a registration for that vessel which was valid at the time of the citation, the clerk may dismiss the case and may assess the dismissal fee.

Section 5. Subsection (15) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(15) DISTRIBUTION OF FEES.—Except as provided in this subsection ~~for the first \$2, \$1 of which shall be remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and \$1 of which shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels,~~ moneys designated for the use of the counties, as specified in subsection (1), shall be distributed by the tax collector to the board of county commissioners for use only as provided in this section. Such moneys to be returned to the counties are for the sole purposes of providing, maintaining, or operating recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and removing derelict vessels, debris that specifically impede boat access, not including the dredging of channels, and vessels and floating structures deemed a hazard to public safety and health for failure to comply with



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s. 327.53. Counties shall demonstrate through an annual detailed accounting report of vessel registration revenues that the registration fees were spent as provided in this subsection. This report shall be provided to the Fish and Wildlife Conservation Commission no later than November 1 of each year. If, before January 1 of each calendar year, the accounting report meeting the prescribed criteria has still not been provided to the commission, the tax collector of that county may not distribute the moneys designated for the use of counties, as specified in subsection (1), to the board of county commissioners but shall, for the next calendar year, remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The commission shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

(a) From the vessel registration fees designated for use by the counties in subsection (1), \$1 shall be remitted to the state for deposit into the Save the Manatee Trust Fund.

(b) From the vessel registration fees designated for use by the counties in subsection (1), \$1 shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels.

(c) From the vessel registration fees designated for use by the counties in subsection (1), the following amounts shall be



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remitted to the state for deposit into the Marine Resources
Conservation Trust Fund to fund derelict vessel removal grants,
as appropriated by the legislature pursuant to s. 376.15:

1. Class A-2: \$0.25 for each 12-month period registered.

2. Class 1: \$2.06 for each 12-month period registered.

3. Class 2: \$9.26 for each 12-month period registered.

4. Class 3: \$16.45 for each 12-month period registered.

5. Class 4: \$20.06 for each 12-month period registered.

6. Class 5: \$25.46 for each 12-month period registered.

(d) Any undisbursed balances identified pursuant to s.
216.301, shall be available for reappropriation to fund the
Florida Boating Improvement Program or public boating access in
accordance with s. 206.06.

Section 6. Paragraph (d) of subsection (3) of section
376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from public
waters.—

(3)

(d) The commission may establish a program to provide
grants to local governments for the removal of derelict vessels
from the public waters of the state. The program shall be funded
from the Marine Resources Conservation Trust Fund or the Florida
Coastal Protection Trust Fund. Notwithstanding the provisions in
s. 216.181(11), funds available for grants may only be
authorized by appropriations acts of the Legislature. In a given
fiscal year, if all funds appropriated pursuant to this
paragraph are not requested by and granted to local governments
for the removal of derelict vessels by the end of the third
quarter, the Fish and Wildlife Conservation Commission may use



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the remainder of the funds to remove, or to pay private
contractors to remove, derelict vessels.

Section 7. Subsection (6) is added to section 823.11,
Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(6) If an owner or a responsible party of a vessel
determined to be derelict through an administrative or criminal
proceeding has been charged by an officer of the commission or
any law enforcement agency or officer as specified in s. 327.70
under subsection (5) for a violation of subsection (2) or a
violation of s. 376.15(2), a person may not reside or dwell on
such vessel until the vessel is removed from the waters of the
state permanently or returned to the waters of the state in a
condition that is no longer derelict.

Section 8. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to vessels; amending s. 327.395, F.S.;
revising boating safety identification requirements
for certain persons; requiring any person who rents
and operates certain vessels to have certain
photographic and safety identification in his or her
possession before operating the vessel; authorizing
the commission to appoint certain persons to issue
temporary certificates; authorizing the commission to



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issue boating safety identification cards tor
temporary certificates in digital or electronic
formats; authorizing the commission to appoint agents
to administer and charge fees for the boating safety
education course or temporary certificate examination;
amending s. 327.4109, F.S.; defining a term; directing
the Fish and Wildlife Conservation Commission to
conduct, contingent upon appropriation, a specified
study of the impacts of long-term stored vessels and
certain anchored and moored vessels on local
communities and the state and to submit a report to
the Governor and Legislature within a specified
timeframe; providing for expiration of the study
requirements; amending s. 327.60, F.S.; authorizing
certain counties to create no-discharge zones;
providing requirements for discharge in specified
areas outside the no-discharge zones; reenacting and
amending s. 327.73, F.S., relating to noncriminal
infractions; specifying the fines for violations
related to no-discharge zones; amending s. 328.72,
F.S.; revising the distribution of vessel registration
fees to provide grants for derelict vessel removal;
amending s. 376.15, F.S.; authorizing the commission
to use certain funds to remove, or to pay private
contractors to remove, derelict vessels; amending s.
823.11, F.S.; prohibiting persons from residing or
dwelling on certain derelict vessels until certain
conditions are met; providing an effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-2-19
Meeting Date

1666
Bill Number (if applicable)

Topic Vessels

Amendment Barcode (if applicable)

Name Bonnie Bashan

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 BOAT U.S.

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/12/15
Meeting Date

1666
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title

Address 817 Ingleside Ave
Street

Phone 850 508 1802

City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Monroe County

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 9/2/16

Bill Number (if applicable) SB1666

Topic Ambered Books

Amendment Barcode (if applicable) _____

Name Ronda Morris

Job Title Manager

Address 135 Albany St West

Phone _____

Street Albany St State 34449

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4-2-19

Bill Number (if applicable) 1666

Topic _____

Amendment Barcode (if applicable) _____

Name JERRY PAUL

Job Title _____

Address _____
Street _____

Phone 850-386-5267

City _____ State _____ Zip _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing America's CRUISING ASSOCIATION (ACA)

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/21/19
Meeting Date

1066
Bill Number (if applicable)

Topic Vessels

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222 9684

Tallahassee FL 32302
City State Zip

Email cohara@flcourts.gov

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 meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 4-2-19

Bill Number (if applicable) 1666

Topic _____

Amendment Barcode (if applicable) 844894

Name JERRY PAUL

Job Title _____

Address _____
Street _____

Phone 850-386-5267

City _____ State _____ Zip _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AMERICA'S CRAFTING ASSOCIATION (ACA)

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.

This form is part of the public record for this meeting.

By the Committee on Environment and Natural Resources; and
Senator Flores

592-03515-19

20191666c1

A bill to be entitled

An act relating to vessels; amending s. 327.395, F.S.; requiring all persons, rather than only persons born after a specified date, to have a specified boating safety identification card in their possession before operating certain vessels; amending s. 327.4109, F.S.; defining a term; directing the Fish and Wildlife Conservation Commission to conduct, contingent upon appropriation, a specified study of the impacts of long-term stored vessels and certain anchored and moored vessels on local communities and the state and to submit a report to the Governor and Legislature within a specified time; providing for expiration of the study; amending s. 327.60, F.S.; authorizing certain counties to create no-discharge zones; defining the term "at sea"; reenacting and amending s. 327.73, F.S., relating to noncriminal infractions; specifying the fines for such violations; amending s. 328.72, F.S.; revising the distribution of vessel registration fees to provide grants for derelict vessel removal; amending s. 376.15, F.S.; conforming provisions to changes made by the act; amending s. 823.11, F.S.; prohibiting persons from residing or dwelling on certain derelict vessels until certain conditions are met; providing an effective date.

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

Section 1. Subsection (1) of section 327.395, Florida

Page 1 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03515-19

20191666c1

Statutes, is amended to read:

327.395 Boating safety identification cards.—

(1) A person ~~born on or after January 1, 1988,~~ may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the commission, or a state-issued identification card or driver license indicating possession of the boater safety identification card, which shows that he or she has:

(a) 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;

(b) Passed a course equivalency examination approved by the commission; or

(c) Passed a temporary certificate examination developed or approved by the commission.

Section 2. Subsection (6) is added to section 327.4109, Florida Statutes, to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(6) (a) As used in this subsection, and applied only for the purposes of the study required by this subsection and not for any other purposes, the term "long-term stored vessel" means a vessel on the waters of the state which is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and which has remained anchored or moored outside of a public mooring

Page 2 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03515-19

20191666c1

field for at least 30 days out of a 60-day period.

(b) The commission shall conduct, or contract with a private vendor to conduct, for not longer than 2 years, a study of the impacts of long-term stored vessels on local communities and this state.

(c) The study shall:

1. Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state.

2. Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels moored within public mooring fields on the local and state economies, public safety, and the environment during and after significant tropical storm and hurricane events.

3. Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside public mooring fields for more than 30 days to mitigate any identified negative impacts to local communities and this state.

(d) The commission shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 6 months after the study is completed.

(e) This subsection is contingent upon appropriation by the Legislature.

(f) This subsection expires January 1, 2024.

Section 3. Present paragraphs (c) and (d) of subsection (4)

592-03515-19

20191666c1

of section 327.60, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

327.60 Local regulations; limitations.—

(4)

(c) A county designated as a rural area of opportunity may create a no-discharge zone for freshwater waterbodies within the county's jurisdiction in which treated and untreated sewage discharges from live-aboard vessels, houseboats, floating structures, and commercial vessels are prohibited. Within no-discharge zone boundaries, vessel operators shall retain their sewage on board for discharge at sea or on shore at a pumpout facility. For the purposes of this section, the term "at sea" means more than 3 miles off the coast in the Atlantic Ocean or more than 10 miles off the coast in the Gulf of Mexico. Violations of this paragraph are punishable as provided in s. 327.53(6) and (7).

Section 4. Paragraph (r) of subsection (1) of section 327.73, Florida Statutes, is amended, and paragraph (s) of that subsection and subsection (4) of that section are reenacted, to read:

327.73 Noncriminal infractions.—

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

(r) Section 327.53(4), (5), and (7), relating to marine sanitation, and section 327.60, relating to no-discharge zones, for which the civil penalty is \$250.

(s) Section 327.395, relating to boater safety education.

592-03515-19

20191666c1

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

(4) Any person charged with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 30 days of the date of receiving the citation; or,

(b) If he or she has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he or she shall be deemed to have admitted the noncriminal infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. If a person who is cited for a violation of s. 327.395 can show a boating safety identification card issued to that person and valid at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10. If a person who is

592-03515-19

20191666c1

cited for a violation of s. 328.72(13) can show proof of having a registration for that vessel which was valid at the time of the citation, the clerk may dismiss the case and may assess the dismissal fee.

Section 5. Subsection (15) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(15) DISTRIBUTION OF FEES.—Except as provided in this subsection for the first \$2, \$1 of which shall be remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and \$1 of which shall be remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities pursuant to s. 206.606, giving priority consideration to counties with more than 35,000 registered vessels, moneys designated for the use of the counties, as specified in subsection (1), shall be distributed by the tax collector to the board of county commissioners for use only as provided in this section. Such moneys to be returned to the counties are for the sole purposes of providing, maintaining, or operating recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities; and removing derelict vessels, debris that specifically impede boat access, not including the dredging of channels, and vessels and floating structures deemed a hazard to public safety and health for failure to comply with s. 327.53. Counties shall demonstrate through an annual detailed

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175 accounting report of vessel registration revenues that the
 176 registration fees were spent as provided in this subsection.
 177 This report shall be provided to the Fish and Wildlife
 178 Conservation Commission no later than November 1 of each year.
 179 If, before January 1 of each calendar year, the accounting
 180 report meeting the prescribed criteria has still not been
 181 provided to the commission, the tax collector of that county may
 182 not distribute the moneys designated for the use of counties, as
 183 specified in subsection (1), to the board of county
 184 commissioners but shall, for the next calendar year, remit such
 185 moneys to the state for deposit into the Marine Resources
 186 Conservation Trust Fund. The commission shall return those
 187 moneys to the county if the county fully complies with this
 188 section within that calendar year. If the county does not fully
 189 comply with this section within that calendar year, the moneys
 190 shall remain within the Marine Resources Trust Fund and may be
 191 appropriated for the purposes specified in this subsection.
 192 (a) From the vessel registration fees designated for use by
 193 the counties in subsection (1), \$1 shall be remitted to the
 194 state for deposit into the Save the Manatee Trust Fund.
 195 (b) From the vessel registration fees designated for use by
 196 the counties in subsection (1), \$1 shall be remitted to the
 197 state for deposit into the Marine Resources Conservation Trust
 198 Fund to fund a grant program for public launching facilities
 199 pursuant to s. 206.606, giving priority consideration to
 200 counties with more than 35,000 registered vessels.
 201 (c) From the vessel registration fees designated for use by
 202 the counties in subsection (1), the following amounts shall be
 203 remitted to the state for deposit into the Marine Resources

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204 Conservation Trust Fund to fund derelict vessel removal grants
 205 pursuant to s. 376.15:
 206 1. Class A-2: \$0.25 for each 12-month period registered.
 207 2. Class 1: \$2.06 for each 12-month period registered.
 208 3. Class 2: \$9.26 for each 12-month period registered.
 209 4. Class 3: \$16.45 for each 12-month period registered.
 210 5. Class 4: \$20.06 for each 12-month period registered.
 211 6. Class 5: \$25.46 for each 12-month period registered.
 212 Section 6. Paragraph (d) of subsection (3) of section
 213 376.15, Florida Statutes, is amended to read:
 214 376.15 Derelict vessels; relocation or removal from public
 215 waters.—
 216 (3)
 217 (d) The commission may establish a program to provide
 218 grants to local governments for the removal of derelict vessels
 219 from the public waters of the state. The program shall be funded
 220 from the Marine Resources Conservation Trust Fund or the Florida
 221 Coastal Protection Trust Fund. Notwithstanding the provisions in
 222 s. 216.181(11), funds available for grants may only be
 223 authorized by appropriations acts of the Legislature.
 224 Section 7. Subsection (6) is added to section 823.11,
 225 Florida Statutes, to read:
 226 823.11 Derelict vessels; relocation or removal; penalty.—
 227 (6) If an owner or a responsible party of a vessel
 228 determined to be derelict as defined in s. 823.11(1) has been
 229 charged by an officer of the commission or any law enforcement
 230 agency or officer as specified in s. 327.70 and adjudicated
 231 under subsection (5) for a violation of subsection (2) or a
 232 violation of s. 376.15(2), a person may not reside or dwell on

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233 such vessel until the vessel is removed from the waters of the
234 state permanently or returned to the waters of the state in a
235 condition that is no longer derelict.

236 Section 8. This act shall take effect July 1, 2019.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 1666
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1694

INTRODUCER: Senator Flores

SUBJECT: Takings Claims Within Areas of Critical State Concern

DATE: March 28, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 1694 provides that the state and the local government located in an area of critical state concern must share equally in judgments if they both are defendants in property rights-related litigation and if:

- The court has found liability against both the state and local government;
- The regulation restricting development or use, which was the basis of the judgment, was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation adopted by the local government restricting development or use, which was the basis of the judgment, was necessary to comply with the guiding principles for the area or other obligations for the area.

II. Present Situation:

The adoption of development regulations can impose significant burdens on a property owner's rights. These regulations can be especially significant in areas designated as areas of critical state concern.

Areas of Critical State Concern

Areas of critical state concern are designated by the Administration Commission, which is composed of the Governor and Cabinet, following a process set forth in statute.¹ Areas that qualify for designation include only:

An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state

¹ Section 380.05, F.S.

or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.²

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission which must be approved by the Department of Economic Opportunity.³

Several areas have been designated as an area of critical state concern or have had their designations ratified by statute. These areas include the Big Cypress Area,⁴ the Green Swamp Area,⁵ the Apalachicola Bay Area,⁶ and the Florida Keys Area.⁷

With respect to the Florida Keys Area, land planning regulations that are subject to approval by the state must be consistent with the principles of protecting many different natural resources and making affordable housing available.⁸ Additionally, these regulations must be consistent with "maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours."⁹

A specific regulation that may form the basis of property rights-related litigation in the Florida Keys Area is the Monroe County Rate of Growth Ordinance.¹⁰ Under this ordinance, Monroe County permits for new residential development are subject to an annual cap of 197 units plus unused allocations from previous years. Additionally, at least 71 but not more than 126 of the 197 permits must be allocated to affordable housing.

According to representatives from Monroe County, the total number of development permits that may be issued in the future is also capped in order to allow for sufficient hurricane evacuation clearance time. As a result, the number of undeveloped lots for which owners may seek development permits exceeds the total number of permits that will ultimately be available. This is expected to provide the impetus for additional property-rights related litigation when the available permits are exhausted in 2023.

Informal Agreement for Shared Defense and Liability with the State

Because the state and the local government in an area designated as an area of critical state concern are involved in the applicable land planning regulations, both the state and the area can be defendants in property-rights based litigation or litigation involving inverse condemnation or takings claims.

² Section 380.05(2), F.S.

³ Section 380.05(6), F.S.

⁴ Section 380.055, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.0555, F.S.

⁷ Section 380.0552, F.S.

⁸ Section 380.0552(1)(d), F.S.

⁹ Section 380.0552(9)(a)2., F.S.

¹⁰ Rule 28-20.140(2), F.A.C.

With respect to Monroe County and the Florida Keys Area, the state and Monroe County have been operating under an informal agreement for 14 years to defend against property-rights related litigation and share equally in judgments awarded against them.¹¹ Judgments in property-rights related litigation arising out of the state-approved Monroe County land development regulations are starting to be entered. And in a judgment provided as an example by Monroe County, the judgment was entered against the county and the state, jointly and severally.^{12,13}

Eminent Domain and Inverse Condemnation

In an eminent domain action the government, as the plaintiff, asserts its power to take private property for a public use. In compliance with the United States Constitution, the government must compensate the land owner for the loss.¹⁴ The Florida Constitution similarly states that no private property may be taken except for a public purpose and each owner must be fully compensated.¹⁵ In an inverse condemnation action, however, the government has “taken” private property without the owner’s consent, either through its activities or conduct, and without adequate compensation. Because the government has not adequately compensated the property owner, the property owner is the plaintiff who sues to recover the value of property that has been taken.¹⁶

There are several forms of takings, one being by regulatory action. In those instances, the trial judge is the trier of all legal and factual issues, except for the issue of what constitutes just compensation for damages.¹⁷ Damages are determined by a jury. For a landowner to be fully compensated, prejudgment interest reaching back to the date of the taking must be permitted.¹⁸ Attorney fees and costs are also recoverable at the trial level and on appeal.¹⁹

Relief from Burdens on Real Property Rights, Chapter 70, F.S.

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Act” in 1995. The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking

¹¹ Correspondence from Jonathan A. Glogau explaining the Monroe County land development regulations and the informal agreement with the state dated March 6, 2019 (On file with the Committee on Judiciary).

¹² *Thomas and Collins v. Monroe County*, Case No. 04-CA-379-M (Fla. 16th Cir. Ct. Feb. 15, 2017)

¹³ The Legislature acknowledged in s.7, ch. 2006-223, Laws of Fla., that the state may have some liability for inverse condemnation actions in the Florida Keys Area due to the state’s role in adopting land use regulations for the area as follows:

If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes.

¹⁴ The Fifth Amendment to the United States Constitution provides “ . . . nor shall private property be taken for public use without just compensation.”

¹⁵ FLA. CONST. art. X, s. 6.

¹⁶ 21 FLA. JUR 2d Eminent Domain, s. 227.

¹⁷ *Id.*, at s. 240.

¹⁸ 21 FLA. JUR 2d Eminent Domain at s. 241.

¹⁹ *Id.*, at s. 242.

under either the State Constitution or the United States Constitution.²⁰ The act provides a process whereby private landowners may seek relief and recover damages when their property is inordinately burdened by the actions of a government.²¹

III. Effect of Proposed Changes:

The bill provides that the state and the local government located in an area of critical state concern must share equally in any award of compensation, costs, attorney fees, and prejudgment interest if:

- The court has determined that both the state and the local government are liable;
- The regulation that restricts development or use of the property was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation that restricts development or use of the property adopted by the local government was necessary for the local government to comply with the principles for guiding development established for the area or other obligations of the area under the area of critical state concern designation.

These proceedings must be brought pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act of ch. 70, F.S., a claim for inverse condemnation, or any other property-rights related action when the state is named as a codefendant or a third-party defendant by a local government in an area of critical state concern. A third-party defendant is “brought into a lawsuit by the original defendant”²² who alleges that the third-party defendant is at fault, or at least partially at fault, for the actions giving rise to the plaintiff’s lawsuit.

The court must enter separate judgments for the apportioned amount against the state and local government, notwithstanding other provisions of law.²³

A governmental entity named as a judgment debtor²⁴ is only liable for postjudgment interest²⁵ on the judgment entered against it. The governmental entity is not liable for postjudgment interest on the judgment entered against the other governmental entity. However, the bill does not prohibit a court from awarding a separate judgment for attorney fees and costs made under these provisions.

The bill takes effect July 1, 2019.

²⁰ Section 70.001, F.S.

²¹ Amber L. Ketterer and Rafael E. Suarez-Rivas, *The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview, Recent Developments, and What the Future May Hold*, THE FLORIDA BAR JOURNAL, (Sept./Oct. 2015), <https://www.floridabar.org/the-florida-bar-journal/the-bert-j-harris-jr-private-property-rights-protection-act-an-overview-recent-developments-and-what-the-future-may-hold/>.

²² BLACK’S LAW DICTIONARY (10th ed. 2014).

²³ The bill cites specifically to s. 11.066, F.S., and s. 7, chapter 2006-223. Section 11.066, F.S., provides that the presumption that the state, when exercising its inherent police power, is presumed to be acting to prevent a public harm, but that presumption may be rebutted in a suit seeking monetary damages from the state or a state agency only by clear and convincing evidence to the contrary. Section 7, chapter 2006-223 is discussed above in footnote 13.

²⁴ A judgment debtor is someone “against whom a money judgment has been entered but not yet satisfied.” BLACK’S LAW DICTIONARY (10th ed. 2014).

²⁵ Postjudgment interest is the amount of interest that a creditor is allowed to collect from a debtor after a judgment is rendered until the date it is paid by the debtor. TheLaw.com Dictionary <https://dictionary.thelaw.com/postjudgment-interest/>.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No agency analyses have been provided that estimate the fiscal impact of this bill. However, the bill will provide the affected state and local governments with some certainty on their liability in property-rights related litigation in areas of critical state concern.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 380.0501 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.

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

By Senator Flores

39-01050A-19

20191694__

A bill to be entitled

An act relating to takings claims within areas of critical state concern; creating s. 380.0501, F.S.; providing for the apportionment of awards of damages for takings claims within areas of critical state concern; providing an effective date.

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

Section 1. Section 380.0501, Florida Statutes, is created to read:

380.0501 Apportionment of awards of damages for takings claims within an area of critical state concern.-

(1) In any proceeding brought pursuant to chapter 70, any claim for inverse condemnation, or any other property-rights related action for compensation in which the state is named as a codefendant with a local government located in an area of critical state concern or named as a third-party defendant by a local government located in an area of critical state concern, the court shall require the state and the local government to equally pay any award of compensation, costs, attorney fees, and prejudgment interest to the property owner if:

(a) The court has found liability against both the state and the local government;

(b) The regulation restricting development or use of the property was mandated or approved by the state land planning agency or the Administration Commission under s. 380.05; or

(c) The regulation restricting development or use of the property adopted by the local government was necessary for the

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local government to comply with the principles for guiding development established for the area or other obligations under the area of critical state concern designation.

(2) Notwithstanding s. 11.066 or s. 7, chapter 2006-223, Laws of Florida, the court shall enter separate judgments for the apportioned amount against the state and local government.

(3) A governmental entity named as a judgment debtor in a judgment entered under this section is only liable for postjudgment interest on the judgment entered against it and is not liable for postjudgment interest on the judgment entered against the other governmental entity. This section does not prohibit a court from awarding a separate judgment for attorney fees and costs pursuant to the limitations set forth in this section.

Section 2. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1572

INTRODUCER: Senator Albritton

SUBJECT: Displacement of Private Waste Companies

DATE: March 29, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Toman	Yeatman	CA	Pre-meeting
2. _____	_____	EN	_____
3. _____	_____	RC	_____

I. Summary:

SB 1572 revises the process and procedures by which local governments may displace private waste companies when local governments have decided to provide waste collections services themselves. The bill provides that a local government may displace a private company that provides collection service only by adopting an ordinance or resolution. Before doing so, the local governments must adopt a resolution of intent 180-days prior which provides goals for the action, justification for any franchise fees, notice of a public hearing, and invitations to service providers to participate in the planning and establishment of the collection service. A plan for providing collections service is required, with the assistance of the affected private waste companies, during a 90-day period after providing the initial notice. A 30 days' notice is required before a public hearing on this proposed plan.

The bill also extends the 3-year waiting period prior to displacement to 5 years, and requires local governments to restart the process if they fail to pass an ordinance or resolution within 12 months of providing notice to affected private waste companies. Definitions are provided to clarify the meaning of waste collection services.

The provisions of the bill replace the existing process and procedures for displacement including an option for local governments to compensate a private waste company for a displacement occurring earlier than the current 3-year waiting period.

II. Present Situation:

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided

by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.³

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.⁶ A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste⁷ will be disposed of in a manner consistent with county ordinance or state or federal law.⁸ Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.⁹

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.¹⁰ The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.¹¹

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county¹² and may contract with other persons to fulfill some or all of its solid waste responsibilities.¹³ Each county must ensure that municipalities within its boundaries participate

¹ FLA. CONST., art. VIII, s. 1.(f).

² FLA. CONST., art. VIII, s. 1.(g).

³ FLA. CONST., art. VIII, s. 2.(b). *See also* s. 166.021(1), F.S.

⁴ Section 125.01(1)(d)(e)(f) and (k)1., F.S.

⁵ Section 166.021(3), F.S.

⁶ Section 125.01(1)(k)1., F.S.

⁷ Section 403.703(36), F.S., defines "solid waste" as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

⁸ Section 125.01(1)(k)2., F.S.

⁹ Section 403.706(1), F.S.

¹⁰ Section 403.705, F.S.

¹¹ Section 403.705(2)(a), F.S.

¹² Section 403.706(1), F.S.

¹³ Section 403.706(8), F.S.

in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.¹⁴ In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.¹⁵ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹⁶

Competition with Private Companies

Section 403.70605, F.S., was enacted in 2000¹⁷ to address concerns of private waste management companies about competition with local government solid waste departments for third party service contracts. Private companies were concerned that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.¹⁸

Solid Waste Collection Services in Direct Competition

Under s. 403.70605, F.S., local governments providing specific solid waste collection services in direct competition with a private company must comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.¹⁹ Local governments may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services, excluding zoning, land use, or comprehensive plan requirements.²⁰

When providing solid waste collection services outside of their jurisdiction in competition with private companies, local governments are prohibited from instituting predatory pricing schemes.²¹

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief.²² The private company must notify the local government of the violation and give them 30 days to respond. A local government may defend against these suits if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government or the action taken was in direct response to a natural disaster or emergency declaration order by the Governor. A court

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.7063, F.S.

¹⁶ *Id.*

¹⁷ Ch. 2000-304, s. 1, Laws of Fla.

¹⁸ See Florida House of Representatives, *CS/HB 1425 Final Analysis*, p. 2 (May 12, 2000), available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited March 29, 2019).

¹⁹ Section 403.70605(1)(a), F.S.

²⁰ Section 403.70605(1)(a)2., F.S.

²¹ Section 403.70605(2), F.S.; see also ss. 542.18 and 542.19, F.S.

²² See ss. 403.70605(1)(b) & (2)(c), F.S. for information for this entire paragraph..

may still grant relief in cases where the official action was taken for public health and safety if the court finds that the actual or potential anticompetitive effects of the official action outweigh the public benefits.

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²³ that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. “Displacement” refers to a local government deciding to provide a collection service and prohibiting a private company from continuing to provide the same service it was providing at the time the local government decision was made.²⁴

Displacement does not include situations such as:

- Public and private sector competition for individual contracts;
- A local government refusing to renew an expiring contract with a private company;
- Local government action in response to any act by a private company that is a threat to public health or safety or a substantial public nuisance;
- A material breach of contract by a private company;
- Contracts between local governments and private companies absent an ordinance that displaces another private company;
- A majority of property owners in the displacement area petitioning for the local governing body to take over collection services;
- Municipal annexations honoring existing solid waste contracts pursuant to law; or
- A private company licensed to provide service for a limited time whose license expires and is not renewed by the local government.²⁵

Before displacing a private company, a local government must first hold at least one public hearing, publically noticed, with separate notice to private companies providing service in the jurisdiction by mail at least 45 days before the hearing.²⁶ The local government must take measures to provide services within 1 year of the final public hearing, and provide 3 years’ notice to a private company before it engages in the actual provision of the service that displaces the company. To avoid the 3 years’ notice requirement, the local government may pay the displaced company an amount equal to the company’s preceding 15 months’ gross receipts for the displaced service in the displacement area. The local government and the private company are not prohibited from agreeing to a different notice period or compensation amount.²⁷

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the 3-year notice period, the company no longer falls within the definition of displaced.²⁸

²³ “Private company” does not include another local government providing solid waste collection services. Section 403.70605(4)(b), F.S.

²⁴ Section 403.70605(3)(a), F.S.

²⁵ Section 403.70605(3)(a), F.S.

²⁶ Section 403.70605(3)(b), F.S.

²⁷ Section 403.70605(3)(c), F.S.

²⁸ Section 403.70605(3)(a)5., F.S.

Other Restrictions on Terminating Private Solid Waste Collection Services

A new municipality, except for the merger of existing municipalities, cannot incorporate without honoring any existing solid waste contracts for 5 years or the remainder of the contract term, whichever is shorter.²⁹ Similarly, municipalities cannot annex additional land subject to existing solid waste contracts without honoring the existing contracts for 5 years or the remainder of the contract term, whichever is shorter.³⁰ If an exclusive franchisee has provided services in an area to be annexed for at least the preceding 6 months, the franchisee may continue to provide service in the area for the shorter of 5 years or the expiration of its service contract as long as it meets certain conditions including providing the service at a reasonable cost.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 403.70605, F.S., to provide revised procedures on the displacement of private waste companies (see the analysis present situation for the current displacement process which is ostensibly deleted by the bill). Specifically, a local government may displace a private company that provides garbage, trash, or refuse collection service only by adopting an ordinance or a resolution. Before adopting such an ordinance or a resolution, the local government must do all of the following:

- At least 180 days before adopting an ordinance or a resolution under this subsection, announce its intent to consider the adoption of an organized collection service by a resolution of intent. The resolution of intent must:
 - Include specific goals to be achieved, a detailed justification for any franchise fees, and all other reasons the local government has for considering such a service;
 - Be published once in the official newspaper of the county or municipality;
 - Give notice of a public hearing to be held at least 30 days before consideration of the adoption of the resolution of intent; and
 - Invite interested persons to participate in the planning and establishing of the organized collection service, including all licensees and other persons operating solid waste or recyclables collection services in the county or municipality as of the date of announcement of its intent to organize collection in the county or municipality.
- Within 90 days after adopting the resolution of intent, develop a plan for organized collection service. The local government shall invite and employ the assistance of all licensees and other persons operating solid waste or recyclables collection services in the county or municipality. All licensees and other persons operating solid waste or recyclables collection in the county or municipality must be allowed to participate in the planning meetings.
- Provide 30 days' notice before a hearing on the proposed plan to all licensees or other persons operating solid waste or recyclables collection services in the county or municipality.

A local government's plan for organized collection service must:

- Describe in detail the procedures used for development of the plan;
- Include evidence of compliance with all notice provisions;
- Evaluate the proposed plan in regard to achieving the stated goals, to minimizing displacement and economic impact to current solid waste collectors, to ensuring participation

²⁹ See s. 165.061(1)(f); see also FLA. CONST., art. I, s. 10.

³⁰ See s. 171.062(4), F.S.; see also FLA. CONST., art. I, s. 10.

³¹ Section 171.062(4)(a)2., F.S.

in the decision-making process of all interested parties, and to maximizing efficiency in solid waste collection; and

- Provide detailed justification for any proposed tax, franchise fee, or similar fee.

A local government may not commence organized collection service for at least 5 years after the adoption of an ordinance or resolution establishing such service. During this period, the local government may not displace any person licensed to operate solid waste collection services in the county or municipality.

If for any reason a local government does not implement an organized collection service by adoption of an ordinance or resolution within one year after the passage of a resolution of intent, the process must be started over.

The term “organized collection service” means a system for collecting solid waste, recyclables, or both. The term includes franchise, organized collection, or a process in which a municipality goes from multiple haulers to one single contracted hauler whereby a specified collector, or a member of a collectors’ organization, is authorized to collect from a defined geographic service area some or all of the solid waste or recyclables that are released by generators.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive economic impact on the private sector because private waste collection companies will have a longer waiting period before being displaced by a local government.

C. Government Sector Impact:

There may be a negative fiscal impact on local governments due to the extension of the three year notice period to five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.70605 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.

By Senator Albritton

26-01504-19

20191572__

A bill to be entitled

An act relating to the displacement of private waste companies; amending s. 403.70605, F.S.; revising the process for a local government to displace a private waste company in a county or municipality; requiring a local government to announce its intent to adopt an ordinance or a resolution for organized collection service through a resolution of intent; providing requirements for the resolution of intent; providing requirements for a local government's plan for organized collection service; prohibiting a local government from commencing organized collection service within a specified timeframe; requiring a local government to restart the process under certain circumstances; defining the term "organized collection service"; providing an effective date.

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

Section 1. Subsection (3) of section 403.70605, Florida Statutes, is amended to read:

403.70605 Solid waste collection services in competition with private companies.—

(3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

(a) A local government may displace a private company that provides garbage, trash, or refuse collection service only by adopting an ordinance or a resolution. Before adopting such an ordinance or a resolution, the local government shall do all of the following:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26-01504-19

20191572__

1. At least 180 days before adopting an ordinance or a resolution under this subsection, announce its intent to consider the adoption of an organized collection service by a resolution of intent. The resolution of intent must:

a. Include specific goals to be achieved, a detailed justification for any franchise fees, and all other reasons the local government has for considering such a service;

b. Be published once in the official newspaper of the county or municipality;

c. Give notice of a public hearing to be held at least 30 days before consideration of the adoption of the resolution of intent; and

d. Invite interested persons to participate in the planning and establishing of the organized collection service, including all licensees and other persons operating solid waste or recyclables collection services in the county or municipality as of the date of announcement of its intent to organize collection in the county or municipality.

2. Within 90 days after adopting the resolution of intent required under subparagraph 1., develop a plan for organized collection service. The local government shall invite and employ the assistance of all licensees and other persons operating solid waste or recyclables collection services in the county or municipality. All licensees and other persons operating solid waste or recyclables collection in the county or municipality must be allowed to participate in the planning meetings.

3. Provide 30 days' notice before a hearing on the proposed plan to all licensees or other persons operating solid waste or recyclables collection services in the county or municipality.

Page 2 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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(b) A local government's plan for organized collection service must:

1. Describe in detail the procedures used for development of the plan;

2. Include evidence of compliance with all notice provisions required under paragraph (a);

3. Evaluate the proposed plan in regard to achieving the stated goals, to minimizing displacement and economic impact to current solid waste collectors, to ensuring participation in the decision-making process of all interested parties, and to maximizing efficiency in solid waste collection; and

4. Provide detailed justification for any proposed tax, franchise fee, or similar fee.

(c) A local government may not commence organized collection service pursuant to this subsection for at least 5 years after the adoption of an ordinance or resolution establishing such service. During this period, the local government may not displace any person licensed to operate solid waste collection services in the county or municipality.

(d) If for any reason a local government does not implement an organized collection service by adoption of an ordinance or resolution within 1 year after the passage of a resolution of intent, the process must be started over as provided in this section.

(e) As used in this subsection, the term "organized collection service" means a system for collecting solid waste, recyclables, or both. The term includes franchise, organized collection, or a process in which a municipality goes from multiple haulers to one single contracted hauler whereby a

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specified collector, or a member of a collectors' organization, is authorized to collect from a defined geographic service area some or all of the solid waste or recyclables that are released by generators

~~(a) As used in this subsection, the term "displacement" means a local government's provision of a collection service which prohibits a private company from continuing to provide the same service that it was providing when the decision to displace was made. The term does not include:~~

~~1. Competition between the public sector and private companies for individual contracts;~~

~~2. Actions by which a local government, at the end of a contract with a private company, refuses to renew the contract and either awards the contract to another private company or decides for any reason to provide the collection service itself;~~

~~3. Actions taken against a private company because the company has acted in a manner threatening to the public health or safety or resulting in a substantial public nuisance;~~

~~4. Actions taken against a private company because the company has materially breached its contract with the local government;~~

~~5. Refusal by a private company to continue operations under the terms and conditions of its existing agreement during the 3-year notice period;~~

~~6. Entering into a contract with a private company to provide garbage, trash, or refuse collection which contract is not entered into under an ordinance that displaces or authorizes the displacement of another private company providing garbage, trash, or refuse collection;~~

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7. ~~Situations in which a majority of the property owners in the displacement area petition the governing body to take over the collection service;~~

8. ~~Situations in which the private companies are licensed or permitted to do business within the local government for a limited time and such license or permit expires and is not renewed by the local government. This subparagraph does not apply to licensing or permitting processes enacted after May 1, 1999, or to occupational licenses; or~~

9. Annexations, but only to the extent that the provisions of s. 171.062(4) apply.

~~(b) A local government or combination of local governments may not displace a private company that provides garbage, trash, or refuse collection service without first:~~

1. ~~Holding at least one public hearing seeking comment on the advisability of the local government or combination of local governments providing the service.~~

2. ~~Providing at least 45 days' written notice of the hearing, delivered by first-class mail to all private companies that provide the service within the jurisdiction.~~

3. ~~Providing public notice of the hearing.~~

~~(c) Following the final public hearing held under paragraph (b), but not later than 1 year after the hearing, the local government may proceed to take those measures necessary to provide the service. A local government shall provide 3 years' notice to a private company before it engages in the actual provision of the service that displaces the company. As an alternative to delaying displacement 3 years, a local government may pay a displaced company an amount equal to the company's~~

26-01504-19

20191572

~~preceding 15 months' gross receipts for the displaced service in the displacement area. The 3-year notice period shall lapse as to any private company being displaced when the company ceases to provide service within the displacement area. Nothing in this paragraph prohibits the local government and the company from voluntarily negotiating a different notice period or amount of compensation.~~

Section 2. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1400

INTRODUCER: Community Affairs Committee and Senator Albritton

SUBJECT: Private Property Rights

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1400 adds a provision allowing an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government. The bill prohibits a local government from enforcing an ordinance or regulation requiring a permit for the pruning, trimming, or removal of certain trees on residential property during March 1 through June 1 of the calendar year under specified circumstances, and the bill prohibits a local government from removing specified trees during this time frame. The bill allows local governments to require a property owner to replant a tree that has been removed in accordance with these provisions. The bill does not apply to mangrove trees.

II. Present Situation:

Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

County governments have authority to prepare and enforce comprehensive plans for the development of the county and provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Local Tree Pruning, Trimming and Removal Regulations

Currently, in Florida there are 67 counties and 412 municipalities.⁶ Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage,⁷ historic, landmark, legacy, special interest, significant, or specimen⁸ trees.

For example, in Broward County the removal of any historical tree⁹ without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.¹⁰ Furthermore, municipalities within Broward County are authorized

³ FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

⁴ Section 125.01, F.S.

⁵ Section 166.021(3), F.S.

⁶ See ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B and E, available at: <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited March 29, 2019).

⁷ A heritage tree is typically a large, individual tree with unique value, which is considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological, and historical value. See Peter A. Coates, *American Perceptions of Immigrant and Invasive Species: Strangers on the Land*, 140 (University of Ca. Press 2006).

⁸ A specimen tree is a tree with any individual trunk that has a DBH (diameter at breast height) of 18 inches or greater (or a circumference of 56.5 inches or greater) when measured at point 4 1/2 feet from the ground at natural grade. In the case of multiple-trunked trees, the DBH shall mean the sum of each trunk's diameter measured at the point 4 1/2 feet from where the tree emerges from the ground at natural grade. The following trees are not considered specimen: Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, mangos, avocados or species of citrus; Non-native species of the genus *Ficus*; and all multi-trunk palms except *Paurotis* palm/Everglades palm (*Acoelorrhapha wrightii*) and *Reclinata* palm (*Phoenix reclinata*), which have a minimum overall height of 15 feet. See Miami-Dade County, Tree Removal or Relocation Permits, available at <https://www.miamidade.gov/permits/tree-removal.asp> (last visited April 3, 2019).

⁹ Broward County Code of Ordinances, Ch. 27, Art. XIV, s. 404 defines a “historical tree” as a particular tree or group of trees which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board of County Commissioners. See Broward County Code of Ordinances, Volume 1, available at https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=COBRCOFLVOI (last visited March 29, 2019).

¹⁰ *Id.* at s. 405

to adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.¹¹

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).¹² This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island.¹³

The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree. Projects that involve alterations, and trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S. Trimming may be authorized in an Environmental Resource Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.¹⁴

Electric Transmission and Distribution Line Right-of-Way Maintenance

Section 163.3209, F.S., provides that after a right-of-way for an electric transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section defines the term “vegetation maintenance and tree pruning or trimming” as the “mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way.” This section requires a utility to provide five business days advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.

Section 2 creates s. 163.3214, F.S., relating to tree pruning, trimming, or removal on residential property. From March 1 through June 1 of the calendar year, a local government is prohibited from doing either of the following:

¹¹ *Id* at s. 407

¹² Chapter 95-299, s. 1, LAWS OF FLA. See ss. 403.9321-403.9333, F.S.

¹³ Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited March 29, 2019).

¹⁴ *Id*.

¹⁵ Section 163.3209, F.S.

- If the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture that the tree is a danger to persons or property and the tree is not a listed endangered species, enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine.
- Authorize the removal of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations.

The bill provides a local government may enforce ordinances or regulations pertaining to the replanting of trees that have been removed in accordance with this section.

The bill does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to the Mangrove Trimming and Preservation Act.¹⁶

Section 3 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Sections 403.9321-403.9333, F.S.

B. Private Sector Impact:

Property owners would save costs associated with permit fees to trim or cut down certain trees.

C. Government Sector Impact:

Local governments may see a decline in money collected in connection to fines or fees associated with various tree ordinances in effect.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill prohibits a local government from authorizing the removal of specimen, heritage or patriarch trees from March 1 through June 1 even with a permit.

VIII. Statutes Affected:

This bill amends section 163.3209 of the Florida Statutes. The bill creates section 163.3214 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.)

CS by Community Affairs on April 2, 2019:

The committee substitute:

- Amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.
- Prohibits application of local government ordinances from requiring a permit for pruning, trimming and removal of certain trees during a specified time period.
- Prohibits a local government from authorizing the removal of certain trees during a specified time period.
- Authorizes a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances.
- Exempts mangrove trees from the bill's application.
- Deletes provisions regarding the Private Property Bill of Rights.

B. Amendments:

None.



694068

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
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The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 163.3209, Florida Statutes, is amended
to read:

163.3209 Electric transmission and distribution line right-
of-way maintenance.—After a right-of-way for any electric
transmission or distribution line has been established and
constructed, no local government shall require or apply any



694068

11 permits or other approvals or code provisions for or related to
12 vegetation maintenance and tree pruning or trimming within the
13 established right-of-way. The term "vegetation maintenance and
14 tree pruning or trimming" means the mowing of vegetation within
15 the right-of-way, removal of trees or brush within the right-of-
16 way, and selective removal of tree branches that extend within
17 the right-of-way. The provisions of this section do not include
18 the removal of trees outside the right-of-way, which may be
19 allowed in compliance with applicable local ordinances. Prior to
20 conducting scheduled routine vegetation maintenance and tree
21 pruning or trimming activities within an established right-of-
22 way, the utility shall provide the official designated by the
23 local government with a minimum of 5 business days' advance
24 notice. Such advance notice is not required for vegetation
25 maintenance and tree pruning or trimming required to restore
26 electric service or to avoid an imminent vegetation-caused
27 outage or when performed at the request of the property owner
28 adjacent to the right-of-way, ~~provided that the owner has~~
29 ~~approval of the local government, if needed.~~ Upon the request of
30 the local government, the electric utility shall meet with the
31 local government to discuss and submit the utility's vegetation
32 maintenance plan, including the utility's trimming
33 specifications and maintenance practices. Vegetation maintenance
34 and tree pruning or trimming conducted by utilities shall
35 conform to ANSI A300 (Part I)-2001 pruning standards and ANSI
36 Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees,
37 and Cutting Brush-Safety Requirements. Vegetation maintenance
38 and tree pruning or trimming conducted by utilities must be
39 supervised by qualified electric utility personnel or licensed



694068

40 contractors trained to conduct vegetation maintenance and tree
41 trimming or pruning consistent with this section or by Certified
42 Arborists certified by the Certification Program of the
43 International Society of Arboriculture. A local government shall
44 not adopt an ordinance or land development regulation that
45 requires the planting of a tree or other vegetation that will
46 achieve a height greater than 14 feet in an established electric
47 utility right-of-way or intrude from the side closer than the
48 clearance distance specified in Table 2 of ANSI Z133.1-2000 for
49 lines affected by the North American Electric Reliability
50 Council Standard, FAC 003.1 requirement R1.2. This section does
51 not supersede or nullify the terms of specific franchise
52 agreements between an electric utility and a local government
53 and shall not be construed to limit a local government's
54 franchising authority. This section does not supersede local
55 government ordinances or regulations governing planting,
56 pruning, trimming, or removal of specimen trees or historical
57 trees, as defined in a local government's ordinances or
58 regulations, or trees within designated canopied protection
59 areas. This section shall not apply if a local government
60 develops, with input from the utility, and the local government
61 adopts, a written plan specifically for vegetation maintenance,
62 tree pruning, tree removal, and tree trimming by the utility
63 within the local government's established rights-of-way and the
64 plan is not inconsistent with the minimum requirements of the
65 National Electrical Safety Code as adopted by the Public Service
66 Commission; provided, however, such a plan shall not require the
67 planting of a tree or other vegetation that will achieve a
68 height greater than 14 feet in an established electric right-of-



694068

way. Vegetation maintenance costs shall be considered recoverable costs.

Section 2. Section 163.3214, Florida Statutes, is created to read:

163.3214 Tree pruning, trimming, or removal on residential property.—

(1) A local government may not enforce an ordinance or regulation governing the pruning, trimming, or removal of trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine when the following applies:

(a) The residential property is in a county that is under a tropical storm or hurricane watch or under a declared state of emergency; and

(b) The property owner has obtained from an arborist who is certified by a certification program of the International Society of Arboriculture proof that the tree is damaged, diseased, or pest-infested or presents a danger to others or to property.

(2) All tree debris material removed pursuant to subsection (1) must be cleared from the residential property within 24 hours after the material has been removed.

(3) A local government may require a property owner to replant a tree that has been removed in accordance with this section.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:



694068

98 Delete everything before the enacting clause
99 and insert:

100 A bill to be entitled
101 An act relating to private property rights; amending
102 s. 163.3209, F.S.; deleting a provision that
103 authorizes electric utilities to perform certain
104 right-of-way tree maintenance only if a property owner
105 has received local government approval; creating s.
106 163.3214, F.S.; prohibiting certain local government
107 ordinances or regulations from requiring a permit,
108 application, notice, fee, or fine for certain
109 activities regarding trees on residential property;
110 requiring tree debris material to be removed from the
111 property within a specified timeframe; authorizing a
112 local government to require a property owner to
113 replant a tree under certain circumstances; providing
114 an effective date.



422236

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2019	.	
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The Committee on Community Affairs (Farmer) recommended the following:

Senate Amendment to Amendment (694068) (with title amendment)

Delete lines 75 - 93
and insert:

(1) A local government may not enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application,



422236

the provision of notice, a fee, or a fine from March 1 through June 1 of the calendar year if the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree is a danger to persons or property and the tree is not a listed endangered species.

(2) A local government may enforce ordinances or regulations pertaining to the replanting of trees that have been removed in accordance with this section.

(3) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

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

And the title is amended as follows:

Delete lines 110 - 113

and insert:

authorizing a local government to enforce ordinances
or regulations pertaining to the replanting of trees
under certain circumstances; providing applicability;
providing



137874

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2019	.	
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The Committee on Community Affairs (Farmer) recommended the following:

Senate Amendment to Amendment (694068) (with title amendment)

Delete lines 75 - 93
and insert:

(1) From March 1 through June 1 of the calendar year, a local government may not enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on



137874

residential property which requires a permit, an application,
the provision of notice, a fee, or a fine if the property owner
has obtained documentation from an arborist certified by the
International Society of Arboriculture or a Florida licensed
landscape architect that the tree is a danger to persons or
property and the tree is not a listed endangered species.

(2) A local government may enforce ordinances or
regulations pertaining to the replanting of trees that have been
removed in accordance with this section.

(3) This section does not apply to the exercise of
specifically delegated authority for mangrove protection
pursuant to ss. 403.9321-403.9333.

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

And the title is amended as follows:

Delete lines 110 - 113

and insert:

authorizing a local government to enforce ordinances
or regulations pertaining to the replanting of trees
under certain circumstances; providing applicability;
providing



492166

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2019	.	
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The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment to Amendment (694068) (with title amendment)

Delete lines 75 - 93
and insert:

(1) From March 1 through June 1 of the calendar year, a local government may not do either of the following:

(a) If the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture that the tree is a danger to persons or property



492166

and the tree is not a listed endangered species, enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine.

(b) Authorize the removal of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations.

(2) A local government may enforce ordinances or regulations pertaining to the replanting of trees that have been removed in accordance with this section.

(3) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

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

And the title is amended as follows:

Delete lines 110 - 113

and insert:

prohibiting a local government from authorizing the removal of certain trees during a specified time period; authorizing a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances; providing applicability; providing



426626

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2019	.	
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The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment to Amendment (694068) (with title amendment)

Delete lines 81 - 82
and insert:
tropical storm or hurricane watch; and

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

And the title is amended as follows:

Delete line 109



426626

11 and insert:
12 activities regarding trees on residential property
13 under certain circumstances;

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 4/21/19

Bill Number (if applicable) SB 1400

Topic Private Property Rights.

Amendment Barcode (if applicable) _____

Name Danielle Irwin

Job Title Volunteer

Address 3185 Ferns Glen Dr.

Phone 904/537-5213

City Tallahassee State FL Zip 32309

Email danielle.h.irwin@gmail.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

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.

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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)

Meeting Date 4/21/19

Bill Number (if applicable)
1400

Topic Private Property Rights

Amendment Barcode (if applicable)
426626

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address 60 Box 1757

Phone 222-9684

City Tallahassee State FL Zip 32302

Email Rebecca.O'Hara@FlaHouse.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

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)

Meeting Date 4-2-19

1400

Bill Number (if applicable)

422236

Amendment Barcode (if applicable)

Topic Tree Removals

Name Kurt Spitzer

Job Title

Address 693 Forest Ln

Phone 228-6212

Street

City

State

Zip

Dallaha

32312

Email kurt.spitzer@ksnet.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. STAMINATOR ASSOCIATION

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)

Meeting Date

4/2/19

Bill Number (if applicable)

426626

Amendment Barcode (if applicable)

Topic

Property Rights

Name

Susan Harbison Alford

Job Title

Deputy Director of Public Policy

Address

Street

Phone

770 546 8845

Email

sharbsin@fl-senators.com

City

State

Zip

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

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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)

Meeting Date 4-2-19

Bill Number (if applicable) 1400

Topic _____

Amendment Barcode (if applicable) 422236

Name DAVID COLLIN

Job Title _____

Address 1674 Univ. Hwy #206

Phone 941.323.3404

City SEASIDE State IL Zip 36283

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SEASIDE 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.

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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)

Meeting Date April 2, 2019

1400

Bill Number (if applicable)

137874

Amendment Barcode (if applicable)

Topic Private Property Rights

Name Kyle Shephard

Job Title Legislative Counsel

Address 400 S. Orange Ave.

Street

City Orlando

State FL

Zip 32801

Phone (407) 579-5952

Email kyle.shephard@orlando.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Orlando

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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

4/21/19

Bill Number (if applicable)

137874

Amendment Barcode (if applicable)

Topic Private Property Rights

Name

Rebecca O'Hara

Job Title

Deputy General Counsel

Address

PO Box 757

Street

Phone

222 9684

City

Tallahassee FL

State

32302

Zip

Email

rehara@flahouse.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida House of Representatives

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.

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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)

Meeting Date

4/2/19

1400

Bill Number (if applicable)

137844

Amendment Barcode (if applicable)

Topic

Property Rights

Name

Susan Harbin Alford

Job Title

Deputy Director of Public Policy

Address

Street

Phone

770 516 8845

Email

sharbin@al-consults.com

City

State

Zip

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

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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)

Meeting Date

2.22.19

14030

Bill Number (if applicable)

137874

Amendment Barcode (if applicable)

Topic

Name

David Cullen

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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By Senator Albritton

26-01762A-19

20191400

A bill to be entitled

An act relating to private property rights; creating s. 163.3214, F.S.; prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; prohibiting a local government from requiring a property owner to replant a tree under certain circumstances; creating s. 715.015, F.S.; establishing a property owner bill of rights; requiring county property appraisers to provide information regarding the property owner bill of rights on the appraiser's website; providing that such bill of rights does not provide a cause of action; providing an effective date.

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

Section 1. Section 163.3214, Florida Statutes, is created to read:

163.3214 Tree pruning, trimming, or removal on residential property.—

(1) A local government may not enforce an ordinance or regulation governing the pruning, trimming, or removal of trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine when either of the following applies:

(a) The residential property is in a county that is subject to a tropical storm watch or warning or a hurricane watch or

26-01762A-19

20191400

warning or is experiencing a tropical storm, a hurricane, or a declared state of emergency, and the property owner has determined that a tree on his or her property is damaged, diseased, or pest-infested, or presents a danger to others or property.

(b) The property owner has obtained from an arborist who is certified by a certification program of the International Society of Arboriculture proof that the tree is damaged, diseased, or pest-infested, or presents a danger to others or property.

(2) A local government may not require a property owner to replant a tree that has been removed in accordance with this section.

Section 2. Section 715.015, Florida Statutes, is created to read:

715.015 Property owner bill of rights.—Each property appraiser office shall provide on its website a property owner bill of rights. The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill of rights is not a comprehensive listing. The property owner bill of rights does not create a civil cause of action. The property owner bill of rights must state:

PROPERTY OWNER

BILL OF RIGHTS

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil

26-01762A-19

20191400__

59 cause of action and neither expands nor limits any
60 rights or remedies provided under any other law. This
61 document is not intended to replace the need to seek
62 legal advice in matters relating to property law. Laws
63 relating to your rights are found in the Florida
64 Constitution, the Florida Statutes, local ordinances,
65 and court decisions.

66
67 As a property owner, you have the following
68 rights and protections:

- 69 1. The right to acquire, possess, and protect
70 property.
71 2. The right to use and enjoyment of property.
72 3. The right to exclude others from property.
73 4. The right to dispose of property.
74 5. The right to due process.
75 6. The right to just compensation for property
76 taken for a public purpose.
77 7. The right to relief, or payment of
78 compensation, when a new law, rule, regulation, or
79 ordinance of the state or a political entity in the
80 state unfairly affects real property.
81 Section 3. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 1400
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

COMMITTEE: Community Affairs
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FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 2, 2019
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CourtSmart Tag Report

Room: SB 301
Caption: Senate Committee on Community Affairs

Case No.:

Type:
Judge:

Started: 4/2/2019 2:07:06 PM
Ends: 4/2/2019 3:59:59 PM **Length:** 01:52:54

2:07:05 PM Meeting Called to Order
2:07:12 PM Roll Call
2:07:15 PM Quorum is Present
2:07:35 PM Tab 8 SB 1508
2:07:41 PM Senator Simmons Explains SB 1508
2:08:46 PM No Questions
2:08:47 PM Mario Bayley Representing the City of Lauderdale Waives in Support of SB 1508
2:08:58 PM Kyle Shephard Representing the City of Orlando Waives in Support of SB 1508
2:09:03 PM No Debate
2:09:13 PM Senator Simmons Waives Close on SB 1508
2:09:16 PM Roll Call on 1508
2:09:21 PM SB 1508 is Reported Favorably
2:09:31 PM Tab 9 SB 1510
2:09:43 PM Senator Simmons Explains SB 1510
2:10:19 PM Senator Simmons Explains Amendment Barcode 498178
2:10:28 PM Amendment Barcode 498178 is Adopted
2:10:41 PM Back on the Bill
2:10:43 PM No Debate
2:10:51 PM Senator Simmons Waives Close on CS/SB 1510
2:10:54 PM Roll Call on CS/SB 1510
2:10:58 PM SB 1510 is Reported Favorably
2:11:03 PM Tab 10 CS/SB 1500
2:11:23 PM Senator Simmons Explains CS/SB 1500
2:11:33 PM No Questions
2:12:34 PM Micahel Dobson from the Real Property, Probate, and Trust Law Section of the Florida Bar Waives in Support of CS/SB 1500
2:12:45 PM No Debate
2:12:53 PM Senator Simmons Waives Close on CS/SB 1500
2:12:58 PM Roll Call on CS/SB 1500
2:13:03 PM CS/SB 1500 is Reported Favorably
2:13:09 PM Tab 11 SB 604
2:13:20 PM Senator Pizzo Explains SB 604
2:13:28 PM Question from Chair Flores
2:13:54 PM Response from Senator Pizzo
2:13:58 PM No Further Questions
2:14:35 PM Senator Farmer in Debate
2:14:44 PM Senator Pizzo Waives Close
2:14:55 PM Roll Call on SB 604
2:15:01 PM SB 604 is Reported Favorably
2:15:08 PM Senator Farmer Acting as Chair
2:15:20 PM Tab 12 CS/SB 1476
2:15:31 PM Senator Flores Explains CS/SB 1476
2:15:37 PM Question from Senator Pizzo
2:16:27 PM Response from Senator Flores
2:16:51 PM Jerry Paul from Fair Insurance Rates In Monroe Waives in Support of CS/SB 1476
2:16:59 PM Comment from Chair Farmer
2:17:11 PM Senator Flores Closes on CS/SB 1476
2:17:46 PM Roll Call on CS/SB 1476
2:17:56 PM CS/SB 1476 is Reported Favorably
2:18:08 PM Senator Flores Resumes as Chair
2:18:13 PM Tab 7 CS/SB 1200
2:18:28 PM Senator Stargel Explains CS/SB 1200

2:18:34 PM No Questions
 2:18:56 PM Kari Hebrank from Nat'l Utility Contractors Assoc. Speaks Against CS/SB 1200
 2:20:52 PM Warren Husband from the Fla. Assoc. General Contractors Council Speaks in Support of CS/SB 1200
 2:22:07 PM Senator Pizzo in Debate
 2:23:07 PM No Further Debate
 2:23:50 PM Senator Stargel Closes on CS/SB 1200
 2:24:00 PM Roll Call on CS/SB 1200
 2:24:10 PM CS/SB 1200 is Reported Favorably
 2:24:19 PM Tab 15 SB 1572 is Temporarily Postponed
 2:24:41 PM Tab 16 SB 1400
 2:24:51 PM Senator Albritton Explains SB 1400
 2:25:49 PM Senator Farmer Acting as Chair
 2:26:49 PM Amendment Barcode 694068 Explained by Senator Flores
 2:28:23 PM Late-filed, Hand-Written Amendment to the Amendment
 2:29:23 PM Hand-Written Amendment to the Amendment is Entered
 2:29:25 PM Flores Explains Hand-Written Amendment
 2:30:52 PM Amendment to the Amendment is Adopted
 2:31:19 PM Amendment Barcodes 426626 and 137874 are withdrawn
 2:31:50 PM Back on the Amendment as Amended
 2:32:12 PM No Questions
 2:32:20 PM No Debate on the Amendment as Amended
 2:32:27 PM No Objection
 2:32:30 PM Amendment is Adopted
 2:32:33 PM Back on the Bill
 2:32:36 PM Senator Flores Resumes as Chair
 2:32:44 PM Danielle Erwin from the League of Women Voters Withdraws Objection to SB 1400
 2:33:14 PM Senator Farmer in Debate
 2:34:25 PM Senator Pizzo in Debate
 2:34:33 PM Comments from Chair Flores
 2:35:44 PM Senator Albritton Closes on CS/SB 1400
 2:37:07 PM Roll Call on CS/SB 1400
 2:38:07 PM CS/SB 1400 is Reported Favorably
 2:38:16 PM Senator Farmer Acting as Chair
 2:38:31 PM Tab 13 CS/SB 1666
 2:38:34 PM Senator Flores Explains Amendment Barcode 844895
 2:39:38 PM No Questions on Amendment
 2:40:38 PM Jerry Paul from America's Cruising Association Waives in Support of the Amendment
 2:40:46 PM No Debate
 2:40:52 PM No Objections
 2:41:02 PM Amendment Barcode 844895 Adopted
 2:41:05 PM Back on the Bill as Amended
 2:41:10 PM No Questions
 2:41:12 PM Rebecca O'Hara from the Florida League of Cities Waives in Support of CS/SB 1666
 2:41:24 PM Jerry Paul from America's Cruising Association Waives in Support of CS/SB 1666
 2:41:33 PM Drinda Merritt, Mayor of Inglis, Waives in Support of CS/SB 1666
 2:41:48 PM Robert Reyes Representing Monroe County Waives in Support of CS/SB 1666
 2:41:52 PM Bonnie Bashan from BOAT U.S. Speaks in Support of CS/SB 1666
 2:42:13 PM Senator Pizzo Speaks in Debate
 2:42:29 PM No Further Debate
 2:42:58 PM Senator Flores Closes on CS/CS/SB 1666
 2:43:12 PM Roll Call on CS/CS/SB 1666
 2:43:16 PM CS/CS/SB 1666 is Reported Favorably
 2:43:31 PM Chair Flores Resumes as Chair
 2:43:35 PM Tab 5 CS/SB 1708
 2:43:53 PM Senator Rouson Explains CS/SB 1708
 2:44:05 PM No Questions
 2:44:39 PM No Debate
 2:44:42 PM Senator Rouson Waives Close on CS/SB 1708
 2:44:50 PM Roll Call for CS/SB 1708
 2:44:55 PM CS/SB 1708 is Reported Favorably
 2:45:02 PM Tab 1 CS/SB 1140
 2:45:23 PM Senator Hutson Explains CS/SB 1140

2:45:32 PM No Questions
2:46:31 PM Amendment Barcode 310490 Explained by Senator Hutson
2:46:42 PM No Objection
2:46:58 PM Amendment Barcode 310490 is Adopted
2:47:02 PM Amendment Barcode 932614 Explained by Senator Hutson
2:47:14 PM No Objection
2:47:31 PM Amendment Barcode 932614 is Adopted
2:47:52 PM Back on the Bill
2:47:56 PM Question from Senator Farmer
2:48:05 PM Comments from Chair Flores
2:48:35 PM David Cullen from Sierra Club Florida Speaks Against CS/SB 1140
2:49:21 PM Laura Youmans from FL Association of Countries Speaks Against CS/SB 1140
2:51:23 PM Rick Templin from the Florida AFL-CU Speaks Against CS/SB 1140
2:52:59 PM Question from Senator Broxson
2:53:58 PM Rick Templin Responds to Senator Broxson
2:54:20 PM Drinda Merritt, Mayor of the Town of Inglis, Waives Against CS/SB 1140
2:55:20 PM Samantha Padgett from the FL Restaurant & Lodging Assoc. Speaks in Support of CS/SB 1140
2:57:21 PM Question from Senator Simmons
2:58:21 PM Response from Samantha Padgett
3:00:15 PM Follow-Up from Senator Simmons
3:01:14 PM Response from Samantha Padgett
3:01:35 PM Jake Farmer from the Florida Retail Associate Waives in Support of CS/SB 1140
3:02:13 PM Brewster Bevis from the Associated Industries of Florida Waives in Support of CS/SB 1140
3:02:19 PM Christopher Emannuel from the Florida Chamber of Commerce Waives in Support of CS/SB 1140
3:02:24 PM Rebecca O'Hara from the Florida League of Cities Speaks in Opposition of CS/SB 1140
3:06:13 PM Question from Senator Pizzo to Senator Hutson
3:07:30 PM Response from Senator Hutson
3:08:29 PM Back-and-forth between Senators Hutson and Pizzo
3:10:55 PM No Further Questions
3:11:55 PM Senator Pizzo in Debate
3:11:57 PM Senator Farmer in Debate
3:14:11 PM Senator Broxson in Debate
3:15:11 PM Senator Simmons in Debate
3:17:55 PM Senator Hutson Closes on CS/CS/SB 1140
3:18:53 PM Roll Call on CS/CS/SB 1140
3:19:43 PM CS/CS/SB 1140 Reported Favorably
3:19:58 PM Tab 6 CS/SB 1758
3:20:13 PM Senator Mayfield Explains CS/SB 1758
3:23:11 PM Senator Mayfield Explains Amendment Barcode 781502
3:24:11 PM Question from Senator Pizzo
3:24:52 PM Response from Senator Mayfield
3:25:19 PM Question from Senator Farmer
3:26:08 PM Response from Senator Mayfield
3:26:48 PM No further Questions
3:27:37 PM David Cullen from Sierra Club Florida Speaks Against the Amendment
3:27:45 PM Rebecca O'Hara from the Florida League of Cities Waives in Support of the Amendment
3:28:09 PM No Debate
3:28:12 PM Mayfield Closes on Amendment Barcode 781502
3:28:15 PM No Objection
3:28:18 PM Amendment Barcode 781502 Adopted
3:28:20 PM Back on the Bill
3:28:22 PM Question from Senator Farmer
3:28:32 PM Response from Senator Mayfield
3:29:06 PM Follow-up from Senator Farmer
3:29:59 PM Response from Senator Mayfield
3:30:35 PM No Further Questions
3:31:10 PM Rusty Payton from the Florida Home Builders Assoc. Withdraws Opposition to CS/SB 1758
3:31:27 PM Drinda Merritt, Mayor of Inglis, Waives in Support of CS/SB 1758
3:31:31 PM Ryan Smart from the Florida Springs Council Speaks in Opposition to CS/SB 1758
3:32:21 PM Question from Senator Broxson
3:33:21 PM Response from Ryan Smart
3:34:45 PM Kirk Mantay from the American Water Security Project Speaks in Support of CS/SB 1758

3:37:25 PM Danielle Irwin from the League of Women Voters Waives in Support of CS/SB 1758
3:38:26 PM Dr. Peter Barile from the American Water Security Project Waives in Support of CS/SB 1758
3:38:30 PM Terry Gibson from the American Water Security Project Waives in Support of CS/SB 1758
3:38:35 PM Dr. Nicole Kirchhoff from the American Water Security Project Waives in Support of CS/SB 1758
3:38:42 PM Jonathan Webber from Florida CONservation Voters Waives in Support of CS/SB 1758
3:38:47 PM Senator Farmer in Debate
3:39:26 PM Senator Mayfield Waives Close on CS/CS/SB 1758
3:40:26 PM Roll Call on CS/CS/SB 1758
3:40:32 PM CS/CS/SB 1758 is Reported Favorably
3:40:43 PM Tab 4 CS/SB 908
3:40:52 PM Senator Hooper Explains CS/SB 908
3:42:06 PM No Questions
3:43:06 PM Amendment Barcode 384436 is Explained by Senator Hooper
3:43:35 PM No Objection
3:43:50 PM Amendment Barcode 384436 is Adopted
3:43:53 PM Amendment 541186 Explained by Senator Pizzo
3:44:04 PM Question from Senator Simmons
3:44:46 PM Response from Senator Pizzo
3:46:01 PM Senator Hooper on the amendment
3:47:01 PM Ellyn Bogdanogg from FACTSS Speaking in Support of the Amendment
3:48:00 PM Jim Millican from the Florida Fire Chiefs Assoc. Speaking Against the Amendment
3:49:13 PM Comments from Chair Flores
3:49:24 PM Senator Pizzo Closes on Amendment Barcode 541186
3:50:47 PM Amendment is Not Adopted
3:51:48 PM Back on the Bill
3:51:54 PM Motion for a time certain vote from Senator Hooper
3:52:14 PM Ellyn Bogdanoff from FACTSS Speaking Against CS/SB 908
3:54:25 PM David Woodside from FFMIA Waives in Support of CS/SB 908
3:55:24 PM Jon Pasqualone from FFMIA Speaking in Support of CS/SB 908
3:55:40 PM John Millican from the Florida Fire Chiefs Association Waives in Support of CS/SB 908
3:56:39 PM Senator Farmer in Debate
3:56:44 PM Senator Pizzo in Debate
3:57:46 PM Motion from Senator Simmons
3:58:45 PM Comment from Senator Flores
3:58:55 PM Senator Hooper Closes on CS/CS/SB 908
3:59:18 PM Roll Call on CS/CS/SB 908
3:59:34 PM CS/CS/SB 908 is Reported Favorably
3:59:42 PM Meeting is Adjourned