

<b>Tab 1</b>	<b>SB 992 by Book; (Compare to CS/H 07063) C-51 Reservoir Project</b>					
452558	D	S	RCS	AEN, Book	Delete everything after	02/14 04:30 PM
<b>Tab 2</b>	<b>CS/SB 1612 by EP, Rader (CO-INTRODUCERS) Book; (Similar to CS/H 01211) Airboat Regulation</b>					
855538	A	S	RCS	AEN, Rader	Delete L.18 - 26:	02/14 04:31 PM
<b>Tab 3</b>	<b>CS/SB 1664 by EP, Simmons; Basin Management Action Plans</b>					
<b>Tab 4</b>	<b>SB 1402 by Simmons (CO-INTRODUCERS) Galvano; (Identical to H 07043) State Assumption of Federal Section 404 Dredge and Fill Permitting Authority</b>					
<b>Tab 5</b>	<b>SB 462 by Young (CO-INTRODUCERS) Mayfield, Book, Steube, Montford, Stewart, Perry, Taddeo, Rouson, Campbell, Flores, Garcia, Farmer, Rodriguez, Torres, Rader; (Identical to H 00237) Advanced Well Stimulation Treatment</b>					

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS SUBCOMMITTEE ON THE  
ENVIRONMENT AND NATURAL RESOURCES**

**Senator Book, Chair**  
**Senator Hukill, Vice Chair**

**MEETING DATE:** Wednesday, February 14, 2018

**TIME:** 1:30—3:30 p.m.

**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Book, Chair; Senator Hukill, Vice Chair; Senators Braynon, Garcia, Hutson, Mayfield, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 992</b> Book (Compare CS/H 7063)	C-51 Reservoir Project; Revising requirements related to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases; authorizing the South Florida Water Management District to enter into certain capacity allocation agreements and to request a waiver for repayment of certain loans; authorizing the Department of Environmental Protection to waive such loan repayment under certain conditions, etc.  EP 02/05/2018 Favorable AEN 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0
2	<b>CS/SB 1612</b> Environmental Preservation and Conservation / Rader (Similar CS/H 1211)	Airboat Regulation; Citing this act as "Ellie's Law"; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; providing a penalty for violation of airboat operation requirements, etc.  EP 01/22/2018 Fav/CS AEN 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0
3	<b>CS/SB 1664</b> Environmental Preservation and Conservation / Simmons	Basin Management Action Plans; Requiring the Department of Environmental Protection and other entities, as part of a basin management action plan, to develop onsite sewage treatment and disposal system remediation plans under certain conditions; specifying requirements for the installation, repair, modification, or upgrade of certain onsite sewage treatment and disposal systems; providing criteria for the prioritization of funding for wastewater treatment facilities, etc.  EP 01/22/2018 Fav/CS AEN 02/14/2018 Favorable AP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on the Environment and Natural Resources  
Wednesday, February 14, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1402</b> Simmons (Identical H 7043)	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority; Defining the term "state assumed waters"; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; requiring the department to adopt rules to create an expedited permit review process, etc.  EP 01/22/2018 Favorable AEN 02/14/2018 Favorable AP	Favorable Yeas 6 Nays 0
5	<b>SB 462</b> Young (Identical H 237, Compare S 834)	Advanced Well Stimulation Treatment; Prohibiting the performance of advanced well stimulation treatments; clarifying that permits for drilling or operating a well do not authorize the performance of advanced well stimulation treatments, etc.  EP 02/05/2018 Favorable AEN 02/14/2018 Favorable AP	Favorable 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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

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BILL: PCS/SB 992 (757058)

INTRODUCER: Appropriations Subcommittee on the Environment and Natural Resources and Senator Book

SUBJECT: C-51 Reservoir Project

DATE: February 16, 2018

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 992 revises provisions relating to the C-51 reservoir project, which is located in western Palm Beach County. Specifically, the bill:

- Adds the phrase “to the extent practicable” to the requirement that the South Florida Water Management District (SFWMD) operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries;
- Requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD;
- Requires that water made available by Phase I or Phase II of the reservoir project be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the SFWMD rules; and
- Authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund.
- If any or all of the loan is waived, the DEP will not receive repayment of up to \$30 million depending on what reasonable value the DEP deems appropriate.
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan which is waived pursuant to this bill.

## II. Present Situation:

### Water Storage Reservoirs

It is the policy of the state that waters in the state are among its basic resources and the Legislature promote the conservation, replenishment, capture, enhancement, development, and proper utilization of surface and groundwater; and develop and regulate dams, impoundments, reservoirs, and other works to provide water storage for beneficial purposes.<sup>1</sup> Storing water is a commonly used technique for optimizing the use of water supplies by collecting water during times of plenty for use during dry or peak use times.<sup>2</sup>

Water storage reservoirs are constructed to improve the quality, timing, and distribution of water within a system. Water storage reservoirs can be used to store raw water prior to treatment at municipal water treatment facilities, to store treated water prior to distribution and use, and to store water for power generation facilities and agricultural uses.<sup>3</sup> Reservoirs can also be used to store water for environmental enhancement, including maintaining minimum flows and levels within a waterbody, as well as reducing the rates and volumes of freshwater discharges into estuaries.<sup>4</sup>

### *C-51 reservoir project*

The C-51 reservoir project is located in western Palm Beach County on land owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities. The project will also provide environmental benefits by reducing freshwater discharges to tide<sup>5</sup> and making additional water available for natural systems.

Phase I of the project will provide 14,000 acre-feet of water storage and costs approximately \$161 million.<sup>6</sup> The SFWMD has declared Phase I of the C-51 reservoir project as one of its alternative water supply pilot projects as it is located in the Lower East Coast Regional Planning Area, which is a restricted allocation area.<sup>7</sup> The water will be used to provide direct aquifer recharge to offset withdrawals from the Biscayne Aquifer. The Broward County Water and Wastewater Services, the City of Sunrise, the City of Lauderhill, and the City of Dania Beach have submitted letters of intent to utilize water made available by Phase I of the C-51 reservoir project.

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<sup>1</sup> Section 373.016, F.S.

<sup>2</sup> Office of Water Policy, Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater, and Excess Surface Water (Senate Bill 536)*, 76 (Dec. 1, 2015), available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan 29, 2018).

<sup>3</sup> *Id.* at 78.

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

<sup>5</sup> The C-51 Canal contributes about 50 percent of the freshwater runoff to the Lake Worth Lagoon.

<sup>6</sup> See Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District (SFWMD), Governing Board Meeting, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), available at <http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427> (last visited Jan. 29, 2018).

<sup>7</sup> Resolution No. 2017-0210, *Enter into an Operation & Maintenance Agreement with Palm Beach Aggregates, LLC for Phase I of the C-51 Reservoir Project*, available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423> (last visited Jan. 29, 2018).

Phase I of the reservoir project is designed to hydraulically connect to the L-8 Flow Equalization Basin and is dependent upon the SFWMD's regional system. Because of the interconnectedness, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate Phase I of the project provided the PBA pays the SFWMD for such operation, maintenance, repair, replacement, and rehabilitation.<sup>8</sup> On February 20, 2017, the SFWMD and the PBA entered into an Operation and Maintenance Agreement which details the rights and responsibilities of each party and requires the SFWMD to operate and maintain the project upon completion.<sup>9</sup>

Phase II of the C-51 reservoir project is estimated to provide 46,000 acre-feet of water storage and cost approximately \$286 million.<sup>10</sup> Phase II of the project is being considered under some of the alternatives that are being modeled for the Loxahatchee River Watershed Restoration project, which is a project component of the Comprehensive Everglades Restoration Program.<sup>11</sup>

The SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project site for Phase II of the project or to enter into a public-private partnership.<sup>12</sup> The SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the SFWMD or the state as necessary to implement Phase II of the project.<sup>13</sup> The state and the SFWMD are authorized to consider potential swaps of land that is owned by the state or the SFWMD to achieve the optimal combination of water quality and water storage. The SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.<sup>14</sup>

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires that:

- The SFWMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.<sup>15</sup>

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.<sup>16</sup> For the 2017-2018 fiscal year, the sum of \$30 million was appropriated to the Water Resource Protection and Sustainability Trust Fund for the purpose of providing a loan to implement Phase I of the C-

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

<sup>11</sup> See United States Army Corps of Engineers, *Read-Ahead and Reference Document for Loxahatchee River Watershed Restoration Project, Array of Alternative Plans to be Evaluated* (Dec. 13, 2017) available at <http://cdm16021.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/6006> (last visited Jan. 29, 2018).

<sup>12</sup> Section 373.4598, F.S.

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

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

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

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

51 reservoir project.<sup>17</sup> The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is required to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at the time of receipt less reasonable expenses. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or the SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir.<sup>18</sup>

Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, or as a project component of the Comprehensive Everglades Restoration Program pursuant to s. 375.041(3)(b)4., F.S.<sup>19</sup>

### **Restricted Allocation Areas**

The term “restricted allocation area” is defined in s. 373.037, F.S., to mean an area within a water supply planning region of the Southwest Florida Water Management District, the South Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period pursuant to ss. 373.036 and 373.709, F.S., and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.

Due to concerns regarding water availability, the SFWMD has declared the Lake Okeechobee Basin a restricted allocation area. Therefore, additional restrictions apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers’ Lake Okeechobee Regulation Schedule.<sup>20</sup>

Another restricted allocation area within the SFWMD’s planning region is the Lower East Coast Regional Planning Area. As a component of the recovery strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist in implementing the objective of the SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.<sup>21</sup>

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<sup>17</sup> Chapter 2017-10, s. 12, Laws of Fla.

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

<sup>19</sup> Section 373.4598, F.S.

<sup>20</sup> SFWMD, *Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), available at [https://www.sfwmd.gov/sites/default/files/documents/wu\\_applicants\\_handbook.pdf](https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf) (last visited Jan. 30, 2018).

<sup>21</sup> *Id.* at 55.

**III. Effect of Proposed Changes:**

The bill adds the phrase “to the extent practicable” to the requirement that the SFWMD operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries. The bill requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD. An agreement between the SFWMD and Palm Beach Aggregates, LLC, was adopted in February of 2017.

The bill requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply. The bill provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD.

The bill authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the DEP to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund pursuant to s. 373.475, F.S. The DEP may only authorize such waiver if, at its determination, it has received reasonable value for such waiver. The bill provides that the SFWMD is not responsible for repayment of any portion of a loan which is waived pursuant to this bill.

The bill takes effect July 1, 2018.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.



**B. Private Sector Impact:**

Depending on if the DEP approves of a waiver of any or all of the loan amount and what reasonable value the DEP deems appropriate, the loan recipient may receive a positive fiscal impact.

**C. Government Sector Impact:**

If any or all of the loan is waived, the DEP will not receive repayment of up to \$30 million depending on what reasonable value the DEP deems appropriate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 373.4598 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.)

**Recommended CS by Appropriations Subcommittee on the Environment and Natural Resources on February 14, 2018:**

The bill requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply.

The bill provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD, rather than in accordance with the rules for the applicable allocation area defined in s. 373.037(1), F.S.

The bill clarifies that the SFWMD is not responsible for repayment of any portion of a loan which is waived pursuant to this bill.

**B. Amendments:**

None.



452558

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
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	.	

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Appropriations Subcommittee on the Environment and Natural  
Resources (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (d) of subsection (9) of section  
373.4598, Florida Statutes, is amended, and paragraph (f) is  
added to that subsection, to read:

373.4598 Water storage reservoirs.—

(9) C-51 RESERVOIR PROJECT.—

(d) If state funds are appropriated for Phase I or Phase II



452558

of the C-51 reservoir project:

1. The district, to the extent practicable, must ~~shall~~ operate either Phase I or Phase II of the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges ~~providing relief~~ to the Lake Worth Lagoon. However, the operation of Phase I of the C-51 reservoir project must be in accordance with any operation and maintenance agreement adopted by the district;

2. Water made available by Phase I or Phase II of the reservoir must ~~shall~~ be used for natural systems in addition to any permitted ~~allocated~~ amounts for water supply; and

3. ~~Any~~ Water received from Lake Okeechobee may only ~~not~~ be available to support consumptive use permits if such use is in accordance with district rules.

(f) The district may enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and may request the department to waive repayment of all or a portion of the loan issued pursuant to s. 373.475. The department may authorize such waiver if, in its determination, it has received reasonable value for such waiver. The district is not responsible for repaying any portion of a loan issued pursuant to s. 373.475 which is waived pursuant to this paragraph.

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

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

And the title is amended as follows:



452558

40 Delete everything before the enacting clause  
41 and insert:

42 A bill to be entitled  
43 An act relating to the C-51 reservoir project;  
44 amending s. 373.4598, F.S.; revising requirements  
45 relating to the operation of water storage and use for  
46 Phase I and Phase II of the C-51 reservoir project if  
47 state funds are appropriated for such phases;  
48 authorizing the South Florida Water Management  
49 District to enter into certain capacity allocation  
50 agreements and to request a waiver for repayment of  
51 certain loans; authorizing the Department of  
52 Environmental Protection to waive such loan repayment  
53 under certain conditions; specifying that the district  
54 is not responsible for repayment of such waived loans;  
55 providing an effective date.

By Senator Book

32-00203B-18

2018992\_\_

1 A bill to be entitled  
 2 An act relating to the C-51 reservoir project;  
 3 amending s. 373.4598, F.S.; revising requirements  
 4 related to the operation of water storage and use for  
 5 Phase I and Phase II of the C-51 reservoir project if  
 6 state funds are appropriated for such phases;  
 7 authorizing the South Florida Water Management  
 8 District to enter into certain capacity allocation  
 9 agreements and to request a waiver for repayment of  
 10 certain loans; authorizing the Department of  
 11 Environmental Protection to waive such loan repayment  
 12 under certain conditions; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Paragraph (d) of subsection (9) of section  
 17 373.4598, Florida Statutes, is amended, and paragraph (f) is  
 18 added to that subsection, to read:  
 19 373.4598 Water storage reservoirs.—  
 20 (9) C-51 RESERVOIR PROJECT.—  
 21 (d) If state funds are appropriated for Phase I or Phase II  
 22 of the C-51 reservoir project:  
 23 1. The district, to the extent practicable, shall operate  
 24 either Phase I or Phase II of the reservoir project to maximize  
 25 the reduction of high-volume Lake Okeechobee regulatory releases  
 26 to the St. Lucie or Caloosahatchee estuaries, in addition to  
 27 maximizing the reduction of harmful discharges ~~providing relief~~  
 28 to the Lake Worth Lagoon. However, the operation of Phase I of  
 29 the C-51 reservoir project must be in accordance with any

Page 1 of 2

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

32-00203B-18

2018992\_\_

30 operation and maintenance agreement adopted by the district;  
 31 2. Water made available by Phase I or Phase II of the  
 32 reservoir shall be used for natural systems in addition to any  
 33 permitted allocated amounts for water supply issued in  
 34 accordance with executed capacity allocation agreements; and  
 35 3. ~~Any~~ Water received from Lake Okeechobee may only not be  
 36 available to support consumptive use permits if such use is in  
 37 accordance with the rules for the applicable restricted  
 38 allocation area as defined in s. 373.037(1).  
 39 (f) The South Florida Water Management District may enter  
 40 into a capacity allocation agreement with a water supply entity  
 41 for a pro rata share of unreserved capacity in the water storage  
 42 facility and may request the department to waive repayment of  
 43 all or a portion of the loan issued pursuant to s. 373.475. The  
 44 department may authorize such waiver if, at its determination,  
 45 it has received reasonable value for such waiver.  
 46 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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

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

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

Feb 14 2018  
Meeting Date

992  
Bill Number (if applicable)

Topic C51-Reservoir Project

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

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

Address 201 W Park Ave #100  
Street

Phone (786) 255-5155

Tallahassee FL 32301  
City State Zip

Email Edgar@ArdidFlorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach 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.**

S-001 (10/14/14)

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

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

2/14/18

Meeting Date

992

Bill Number (if applicable)

Topic C-51 Reservoir

Amendment Barcode (if applicable)

Name Frank Bernardino

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

Address 201 W. Park Ave, Suite 100

Phone 561/718-2345

Street

Tallahassee

FL

32301

City

State

Zip

Email Frank@antfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward 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.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

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BILL: PCS/CS/SB 1612 (473282)

INTRODUCER: Appropriations Subcommittee on the Environment and Natural Resources;  
Environmental Preservation and Conservation Committee; and Senator Rader and others

SUBJECT: Airboat Regulation

DATE: February 16, 2018

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

- Photographic identification.
- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

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

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



The bill requires airboat operators that carry passengers for hire to complete a FWC-approved airboat operator course if they do not have a United States Coast Guard Captain's License. This will create a negative, indeterminate fiscal impact to these airboat operators.

To implement the provisions of the bill, the FWC will incur minimal costs which can be absorbed within the FWC's existing resources.

## **II. Present Situation:**

### **Airboats**

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

### **Florida Vessel Safety Law**

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

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

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and

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

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

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

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

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

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

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

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

- Any other law enforcement officer described in s. 943.10, F.S.<sup>9</sup>

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to \$1,000 or a term of imprisonment not exceeding one year. Each operator is responsible for operating his or her vessel in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of \$50.

### ***Safety Equipment***

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

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

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

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

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

- Completed a commission-approved boater education course that meets the minimum eight hour instruction requirement established by the National Association of State Boating Law Administrators;

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

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

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

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

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

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

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

- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.<sup>16</sup>

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.<sup>17</sup> An agent is required to charge a \$2 examination fee, which must be forwarded to the FWC with proof of passage of the examination and may charge and keep a \$1 service fee.<sup>18</sup> The boating courses include coverage related to:

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

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

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

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

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

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

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

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

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

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

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

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

### Passengers For Hire on Vessels

On federal waters a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.<sup>23</sup> This includes charters for fishing, sightseeing, diving, transportation, teaching or any use which is considered a passenger for hire situation.<sup>24</sup> When carrying six passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than six passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.<sup>25</sup> All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.<sup>26</sup>

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

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

### Boating Accidents and Citations

In 2016, there were 714 reportable<sup>30</sup> boating accidents and 67 boating related fatalities in Florida.<sup>31</sup> Seventy percent of the operators involved in fatal accidents had no formal boater education.<sup>32</sup> The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.<sup>33</sup> From 2015-2017, a total of 112 airboat

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

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

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

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

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

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

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

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

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

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

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

accidents occurred in Florida, resulting in 146 injuries.<sup>34</sup> Commercial airboats represented 21 percent of the total accidents and almost 46 percent of the total injuries, including one fatality.<sup>35</sup>

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

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

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

### III. Effect of Proposed Changes:

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

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

- Photographic identification.

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

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

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

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

- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided in this section.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the FWC rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

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

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

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

The bill takes effect upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Airboat operators who do not have a United States Coast Guard Captains' License will be required to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

C. Government Sector Impact:

The FWC will have increased workload relating to the adoption of rules to establish minimum standards for an approved airboat operator course. The costs associated with this increased workload may be absorbed within the FWC's existing resources.<sup>38</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**Recommended CS/CS by Appropriations Subcommittee on the Environment and Natural Resources on February 14, 2018:**

The CS/CS provides technical changes to clarify what requirements must be met to carry passengers for hire on an airboat.

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

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

B. Amendments:

None.

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

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



855538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
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	.	

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Appropriations Subcommittee on the Environment and Natural Resources (Rader) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 18 - 26  
and insert:  
operate an airboat carrying one or more passengers for hire on  
waters of the state, unless he or she has all of the following  
on board the airboat:  
1. Photographic identification.  
2. Proof of completion of a boater education course  
compliant with s. 327.395(1)(a). All airboat operators carrying





855538

passengers for hire must complete this course, regardless of age  
or exemptions provided in s. 327.395, except as otherwise  
provided in this section.

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

4. Proof of successful course completion in

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

And the title is amended as follows:

Delete line 6

and insert:

carrying passengers for hire; requiring all airboat  
operators carrying passengers for hire to complete a  
boater education course; providing an exception;

By the Committee on Environmental Preservation and Conservation;  
and Senators Rader and Book

592-02316-18

20181612c1

A bill to be entitled

An act relating to airboat regulation; providing a short title; amending s. 327.391, F.S.; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; providing an exception; providing a penalty; amending s. 327.73, F.S.; providing a penalty for violation of airboat operation requirements; providing an effective date.

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

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

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

327.391 Airboats regulated.—

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

1. A photographic identification card.

2. Proof of compliance with s. 327.395.

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

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

(b) A person issued a captain's license by the United States Coast Guard is not required to complete the boating

Page 1 of 2

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

592-02316-18

20181612c1

safety education course required under s. 327.395. Proof of the captain's license must be on board the airboat when carrying passengers for hire on waters of the state.

(c) A person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73.

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

327.73 Noncriminal infractions.—

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

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

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.

Section 4. This act shall take effect upon becoming a law.

Page 2 of 2

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

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

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

2-14-18

Meeting Date

1612

Bill Number (if applicable)

Topic

Airboats

Amendment Barcode (if applicable)

Name

Lane Stephens

Job Title

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Email

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City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Florida Airboat Association

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Rob Bradley, Chair  
Appropriations Subcommittee on The Environment and Natural Resources

**Subject:** Committee Agenda Request

**Date:** January 24, 2018

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I respectfully request that **Senate Bill # 1612**, relating to Airboat Regulation, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

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Senator Kevin J. Rader  
Florida Senate, District 29

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

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BILL: CS/SB 1664

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simmons

SUBJECT: Basin Management Action Plans

DATE: February 13, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1664:

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

The bill does not affect state and local revenues or expenditures directly.

The bill takes effect on July 1, 2018.

## **II. Present Situation:**

### **Total Maximum Daily Loads**

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

### **Basin Management Action Plans and Best Management Practices**

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

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

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

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

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

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

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

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

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.<sup>7</sup> Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.<sup>8</sup>

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

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

## Sources of Pollutants

### *Onsite sewage and disposal systems*

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

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

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

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

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

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

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

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

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

The Department of Health (DOH) administers septic system programs, develops statewide rules, and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state.<sup>15</sup> An estimated 2.7 million septic systems are in use statewide, serving approximately one third of the state's population.<sup>16</sup>

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

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

### **Wastewater Treatment Facilities**

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

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

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

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

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

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

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

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

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

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

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



Chapter 403, F.S., requires that any facility or activity which discharges waste into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from the DEP. Generally, persons who intend to collect, transmit, treat, dispose or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by the DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.<sup>25</sup>

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

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

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

## **Water Project Funding Sources**

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

Florida's Clean Water State Revolving Fund is funded through money received from federal grants as well as state contributions. These funds then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also

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

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

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

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

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

available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage that the community qualifies. The Clean Water State Revolving Fund Program provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural BMPs may also qualify for funding. Very low interest rate loans, grants and other discounted assistance for small communities is available. Interest rates on loans are below market rates and vary based on the economic wherewithal of the community. Generally, local governments and special districts are eligible loan sponsors.<sup>30</sup>

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

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

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

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

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

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

The bill requires the DEP, the DOH, relevant local governments, and relevant local public and private wastewater utilities to develop an onsite sewage treatment and disposal system

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

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

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

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

remediation plan, as part of a BMAP, if the DEP determines that remediation is necessary to achieve a TMDL. The bill provides that in order to promote cost-effective remediation, the DEP is authorized to identify one or more priority focus areas.

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

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

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

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

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

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

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

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

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

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

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

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

The bill takes effect July 1, 2018.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

To the extent funds are available, DEP or the WMD may enter into cost-sharing agreements with local governments for the creation or improvement of wastewater treatment facilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 403.067 of the Florida Statutes.

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

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

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

- Removes the requirement that DEP, DOH, and relevant local governments and local public and private wastewater utilities develop a public wastewater treatment plant remediation plan as part of a BMAP.

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

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation;  
and Senator Simmons

592-02317A-18

20181664c1

A bill to be entitled

An act relating to basin management action plans; amending s. 403.067, F.S.; defining "onsite sewage treatment and disposal system"; requiring the Department of Environmental Protection and other entities, as part of a basin management action plan, to develop onsite sewage treatment and disposal system remediation plans under certain conditions; specifying parameters for selecting priority focus areas for remediation; specifying the parameters for developing and adopting a remediation plan; specifying requirements for the installation, repair, modification, or upgrade of certain onsite sewage treatment and disposal systems; requiring the department to evaluate the need for the creation or improvement of wastewater treatment facilities; authorizing funding; providing criteria for the prioritization of funding for wastewater treatment facilities; requiring the department to develop rules; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

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

403.067 Establishment and implementation of total maximum

Page 1 of 5

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

592-02317A-18

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daily loads.-

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

(d) Onsite sewage treatment and disposal systems.-

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

2. As part of a basin management action plan, the department, the Department of Health, relevant local governments, and relevant local public and private wastewater utilities must develop an onsite sewage treatment and disposal system remediation plan 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 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 within 5 years of the effective date of this act. The department is the lead agency in coordinating the preparation and adoption of the plan. In developing and adopting the plan, the department shall:

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

Page 2 of 5

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

592-02317A-18

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b. 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;

c. Ensure that the plan includes options, if appropriate, for system repair, upgrade, or replacement; drainfield modification; the addition of effective nutrient-reducing features; connection to a central sewerage system; or other actions addressing onsite sewage treatment and disposal system issues. 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

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

3. The installation, repair, modification, or upgrade of

592-02317A-18

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onsite sewage treatment and disposal systems on lots of 1 acre or less and within the boundaries of a basin management action plan with an onsite sewage treatment and disposal remediation plan must conform to the requirements of the remediation plan.

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

1. Eliminate public health hazards;

2. Enable compliance with laws requiring the elimination of discharges to specific water bodies;

3. Assist in the implementation of total maximum daily



592-02317A-18

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loads adopted under this section;

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

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

6. Promote reclaimed water reuse;

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

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

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

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

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

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

2/14/18

Meeting Date

SB 1064

Bill Number (if applicable)

Topic BMAPs

Amendment Barcode (if applicable)

Name Anne Harvey Holbrook

Job Title Attorney

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Save the Manatee

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.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18  
Meeting Date

1664  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

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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.*

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

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Lauren Book, Chair  
Appropriations Subcommittee on The Environment and Natural Resources

**Subject:** Committee Agenda Request

**Date:** January 23, 2018

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I respectfully request that **Senate Bill 1664**, relating to Onsite Sewage Treatment and Disposal Systems, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons  
Florida Senate, District 9

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

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BILL: SB 1402

INTRODUCER: Senators Simmons and Galvano

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

DATE: February 13, 2018

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

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

---

**I. Summary:**

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

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

The DEP will experience additional workload associated with the administration of a section 404 permitting program. The costs of this additional workload and the costs associated with reprogramming the permit tracking and compliance and enforcement applications and databases are indeterminate. The DEP has indicated that it can absorb the costs within its existing resources.

## **II. Present Situation:**

### **Dredge and Fill Activities**

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

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

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

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

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

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

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

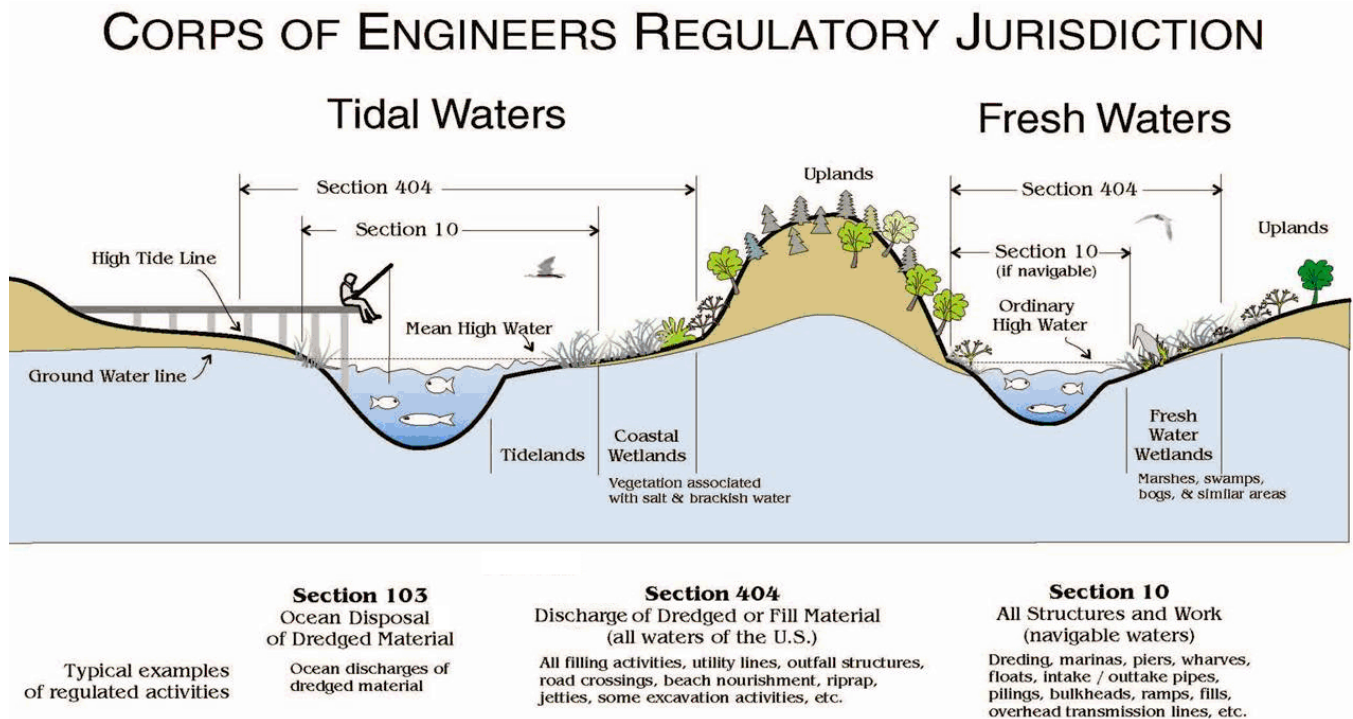
<sup>6</sup> Department of Environmental Protection (DEP), *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, 2 (Sept. 30, 2005) available at [https://www.aswm.org/pdf\\_lib/consolidation\\_program.pdf](https://www.aswm.org/pdf_lib/consolidation_program.pdf).

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

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

## Federal Dredge and Fill Permits

The federal government regulates dredge and fill activities in navigable waters through section 10 of the Rivers and Harbors Act of 1899.<sup>9</sup> The federal government regulates a broader category of waters, “waters of the United States,” pursuant to section 404 of the Clean Water Act. Section 404 establishes a program for permits for the discharge of dredged or fill material into navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects.<sup>10</sup> The illustration below is descriptive of the Corps jurisdiction over dredge and fill activities.<sup>11</sup>



### Requirements for a Section 404 permit

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

- A practicable alternative exists that is less damaging to the aquatic environment; or

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

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

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

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

- The nation's waters would be significantly degraded.<sup>13</sup>

An individual permit is required for potentially significant impacts. The Corps evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA.<sup>14</sup> The guidelines provide a sequential review process which first requires a permit applicant to demonstrate that all available alternatives to the discharge of dredged or fill material have been considered and that no practicable alternative exists which would have a less adverse impact on the aquatic ecosystem, and which also would not have other significant adverse environmental consequences.<sup>15</sup> Practicable alternatives, include, but are not limited to:

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

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

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

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

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

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

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

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

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

<sup>19</sup> 40 C.F.R. § 230.10(b).

<sup>20</sup> 40 C.F.R. § 230.10(c).

<sup>21</sup> 40 C.F.R. § 230.10(d).

<sup>22</sup> 40 C.F.R. § 230.93.



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

Discharges of dredged or fill material are not prohibited or otherwise subject to regulation if they are associated with normal ongoing farming, ranching, and forestry activities, such as plowing, seeding, cultivating, or harvesting food, fiber, or forest products; minor drainage; maintenance of drainage ditches; construction and maintenance of irrigation ditches; construction and maintenance of farm or stock ponds; construction and maintenance of farm or forest roads, in accordance with best management practices; construction of temporary sedimentation basins on a construction site; and maintenance of dams, dikes, and levees. These discharges are exempt from the 404 permitting requirements if they do not convert a wetland to an upland area through the discharge of dredged or fill material. In addition, discharges resulting from an activity with respect to which a state has an approved program under section 1288(b)(4) are exempt. Such programs are intended to remediate areas having substantial water quality control problems and address control of dredge and fill discharge of agriculture and silviculture nonpoint sources of pollution, mine-related sources of pollution, construction activity related sources of pollution, salt water intrusion, residual waste, or disposal of pollutants on land or in subsurface excavations.<sup>23</sup>

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

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

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

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

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

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

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

### ***ERP Exemptions***

Under ss. 373.406 and 403.927, F.S., most routine, customary agricultural, silvicultural, floricultural, and horticultural activities do not require an ERP permit. Any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture has the right to alter the topography of the land for purposes consistent with the practice of such occupation, provided the alteration is not for the sole or predominant purpose of impounding or obstructing surface waters. All five state WMDs have adopted specific rules to regulate other agricultural activities, including the adoption of noticed general permits.<sup>27</sup> The review of all agricultural activities, including permitting, compliance, and enforcement, is the responsibility of the WMDs.<sup>28</sup> The Department of Agriculture and Consumer Services (DACS), in cooperation with the DEP and the WMDs, have developed various best management practices handbooks to assist the agriculture community in working in a manner that will minimize adverse impacts to wetlands and other surface waters.<sup>29</sup>

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

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

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

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

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

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

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

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

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

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

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

***ERP Permit Standards***

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

- Cause adverse water quantity impacts to receiving waters and adjacent lands;
- Cause adverse flooding to on-site or off-site property;
- Cause adverse impacts to existing surface water storage and conveyance capabilities;
- Adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;
- Adversely affect the quality of receiving waters such that state water quality standards, which includes surface waters and groundwater, will be violated. Special provisions apply to allow no degradation of the water quality of Outstanding Florida Waters (OFWs);<sup>35</sup>
- Cause adverse secondary impacts to water resources;
- Adversely impact the maintenance of surface or groundwater levels or surface water flows; or
- Adversely impact a work of a WMD.<sup>36</sup>

In addition, activities requiring a permit must:

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

Activities in wetlands and other surface waters must not be contrary to the public interest, or, if the activity is located in an OFW, the activity must be clearly in the public interest.<sup>38</sup> Direct, secondary, and cumulative impacts are considered for all activities requiring a permit. Secondary impacts are those actions or actions that are very closely related and directly linked to the activity under review that may affect wetlands and other surface waters and that would not occur but for the proposed activity. Cumulative impacts are residual adverse impacts to wetlands and other surface waters in the same drainage basin that have or are likely to result from similar activities (to that under review) that have been built in the past, that are under current review, or that can reasonably be expected to be located in the same drainage basin as the activity under review. Mitigation that fully offsets impacts within the drainage basin where the project impacts occur is assumed to have no adverse cumulative impacts. Consideration is given to upland buffers that are designed to protect the functions that uplands provide to wetlands and other surface waters. Special provisions also exist to protect waters used for shellfish harvesting.<sup>39</sup>

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

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

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

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

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

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

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

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

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

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

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

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

A state may apply to the EPA for state assumption of the federal section 404 program. The application for state assumption must include a complete description of the state program it proposes to administer and establish under state law.<sup>42</sup> In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.<sup>43</sup> The EPA then conducts a rigorous assessment of the state's program and

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

<sup>41</sup> DEP, *Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida*, 10, 11 (February 23, 2011), DEP, *Environmental Resource Permit Applicant's Handbook, Volume 1*, AH 5.5.3.5, incorporated by reference in Fla. Admin. Code R. 62-330.010(4), (October 1, 2013) available at: <https://www.flrules.org/gateway/reference.asp?No=Ref-03174> (last visited January 15, 2018), s. 373.4141, F.S.

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

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

ensures that it is no less stringent than the federal program.<sup>44</sup> To date, only two states (Michigan and New Jersey) have assumed section 404 permitting authority.<sup>45</sup>

A state that is approved by the EPA to administer the section 404 permitting program serves as the regulatory entity over dredge and fill activities within section 404 waters in place of the Corps. However, under federal law, waters that are, or could be, used to transport interstate or foreign commerce, tidal waters, and wetlands adjacent to these waters are non-assumable.<sup>46</sup> Thus, the Corps retains jurisdiction over these waters.<sup>47</sup> For coastal states, the extent of jurisdiction retained by the Corps may be an impediment to state assumption. Additionally, there is uncertainty regarding what specific waters the Corps retains jurisdiction over and the extent to which their adjacent wetlands extend landward.<sup>48</sup>

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

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

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

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

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

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

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

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

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

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

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

### ***Assumption Requirements***

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

- The state must have jurisdiction over all waters, including wetlands that are under federal jurisdiction. Dredge and fill activities in lakes, streams, and other waters defined in federal regulations must be regulated by the state in addition to wetlands.
- The state's laws must regulate at least the same activities as those regulated under federal law. State regulations can be broader than federal regulations but cannot exempt activities that require a federal permit.
- The state laws must ensure compliance with federal regulations, including the section 404(b)(1) guidelines. State regulations can provide greater resource protection but cannot be less stringent than federal regulations.
- The state program must have adequate enforcement authority. Under a state-assumed program, primary responsibility for enforcement rests with the state.<sup>52</sup>

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

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

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

A state must provide public notice of state-administered section 404 permit applications and provide a reasonable period, normally 30 days, for interested parties to provide comment.<sup>57</sup> Interested parties may request a public hearing on a state-administered section 404 permit

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

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

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

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

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

<sup>57</sup> 40 C.F.R. § 233.32(b).



application. A state must hold a public hearing when it determines there is a significant degree of public interest in a state-administered section 404 permit application or a draft general permit. A state may also hold a hearing, at its discretion, whenever it determines a hearing may be useful to a decision on the state-administered section 404 permit application.<sup>58</sup>

If the EPA does not comment on a state-administered section 404 permit application, the state must make its final permit decision at the close of the public comment period.<sup>59</sup> If the EPA comments on the state-administered section 404 permit application, the state must follow a specific procedure.<sup>60</sup> In the event that the state neither satisfies the EPA's objections or requirements for a permit condition nor denies the state-administered section 404 permit, the Corps must process the permit application. Significantly, if the EPA objects to issuance of a permit, the state may not issue a section 404 permit unless the objection is resolved. There is no federal provision for the automatic issuance of a permit based on the running of time.<sup>61</sup>

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

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

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

Section 404 permits issued by the state must include conditions prescribed by the EPA.<sup>63</sup> This includes that state-administered section 404 permits may not exceed five years.<sup>64</sup> Section 404 permits issued by the Corps and Florida's ERPs have longer or indefinite durations. Applicants

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<sup>58</sup> 40 C.F.R. § 233.33.

<sup>59</sup> 40 C.F.R. § 233.35(b).

<sup>60</sup> 40 C.F.R. § 233.35(a).

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

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

<sup>63</sup> 40 C.F.R. § 233.23.

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

may seek to extend the duration of their state-administered section 404 permits, but the extension may not last beyond five years from the original effective date.<sup>65</sup> A state may continue the Corps or state issued section 404 permits until the effective date of the new permits, if state law allows.<sup>66</sup>

### *Endangered Species Act*

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

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

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

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

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

<sup>66</sup> 40 C.F.R. § 233.38.

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

<sup>68</sup> 40 C.F.R. § 230.30.

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

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

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

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

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



### ***Funding***

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

While federal funds may be available for gaining state assumption, no federal funds are allocated to a state for administration of the state program. Federal law requires all pending section 404 permit applications to be transferred to the state program upon assumption.<sup>76</sup> Annual costs for the ongoing administration of a state program varies from state to state.<sup>77</sup> For states that already expend funds operating a state permit program, such as Florida's ERP program, the added cost of state assumption may not be as significant.<sup>78</sup>

### **Existing State Authority**

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

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

A state desiring to administer a general permit may submit to the Corps a description of the program the state proposes to establish and administer under state law.<sup>84</sup> If the Corps approves

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

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

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

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

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

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

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

<sup>81</sup> 33 U.S.C. § 1344(e)(1).

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

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

<sup>84</sup> 33 U.S.C. §1344(g)(1).

the state's program, the state takes over issuing the general permits.<sup>85</sup> Programmatic general permits are a type of general permit founded on an existing state, local, or federal agency program designed to avoid duplication with that program. The Corps has issued 12 programmatic general permits for Florida.<sup>86</sup>

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

#### **Authority for State Assumption**

The bill:

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

#### **Reconciliation of State Law**

The bill provides that:

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

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

A state-administered section 404 permit is not required for activities exempted from federal regulation. The bill clarifies that specified state statutory exemptions from permitting requirements continue to apply to ERPs, but those same exemptions do not apply to state-administered section 404 permits.

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<sup>85</sup> 33 U.S.C. §1344(h).

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

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

The bill:

- Provides that upon state assumption of the section 404 permitting program, the DEP must grant or deny an application for a state-administered section 404 permit within the time allowed for permit review under federal rules;
- Specifically exempts the DEP from the time limitations provided in state statute for state-administered section 404 permits;
- Requires that all state-administered section 404 permits must be for a period of no more than five years;
- Provides that a state-administered section 404 permit does not expire until the DEP takes final action upon the application for reissuance of the permit or until the last day for seeking judicial review of the agency order or a later date fixed by order of a reviewing court;
- Provides that if the DEP fails to render a permitting decision within the time allowed by federal law and rule or a memorandum of agreement executed by the DEP and the EPA, whichever is shorter, the applicant may apply for an order from the circuit court requiring the DEP to render a decision within a specified time;
- Requires the DEP to adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state-administered section 404 permits where:
  - There have been no material changes in the scope of the project as originally permitted;
  - Site and surrounding environmental conditions have not changed; and
  - The applicant does not have a history of noncompliance with the existing permit; and
- Provides that a decision by the DEP to approve the reissuance of a state-administered section 404 permit is subject to state statutory provisions governing challenges and hearings of agency decisions only with respect to any material permit modification or material changes in the scope of the project as originally permitted.

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

The bill takes effect upon becoming law.

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

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

None.

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

None.

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

None.

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

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

**B. Private Sector Impact:**

Indeterminate. Assumption of the 404 dredge and fill permitting program by the state may reduce the costs incurred by permit applicants because of the streamlined permitting process and may increase other efficiencies that result from dredge and fill permitting by a single government agency. State assumption may also reduce the length of time necessary to obtain a dredge and fill permit.<sup>88</sup>

**C. Government Sector Impact:**

The DEP will experience additional workload associated with the administration of a section 404 permitting program. The additional workload includes rulemaking to adopt federal requirements, criteria, and regulations necessary to obtain assumption of the section 404 permitting program and the actual processing of the additional section 404 permits. The costs of this additional workload and the costs associated with reprogramming the permit tracking and compliance and enforcement applications and databases are indeterminate. The DEP has indicated that it can absorb the additional workload within existing resources. The DEP does not anticipate an increase in permitting administration expenditures and believes that, upon assumption, the processing of state 404 permits, as well as enforcement activities for state 404 permits, can be absorbed without an increase in staffing or administrative costs.<sup>89</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 373.4146 of the Florida Statutes.

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

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

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

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Simmons

9-00612D-18

20181402\_\_

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

Page 1 of 4

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

9-00612D-18

20181402\_\_

30 a delegated entity; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Section 373.4146, Florida Statutes, is created  
 35 to read:  
 36 373.4146 State assumption of the federal Clean Water Act,  
 37 section 404 dredge and fill permitting program.—  
 38 (1) As used in this section, the term "state assumed  
 39 waters" means waters of the United States that the state assumes  
 40 permitting authority over pursuant to s. 404 of the Clean Water  
 41 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,  
 42 and rules promulgated thereunder, for the purposes of permitting  
 43 the discharge of dredge or fill material.  
 44 (2) The department has the power and authority to assume,  
 45 in accordance with 40 C.F.R. part 233, the dredge and fill  
 46 permitting program established in s. 404 of the Clean Water Act,  
 47 Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and  
 48 rules promulgated thereunder. The department may adopt any  
 49 federal requirements, criteria, or regulations necessary to  
 50 obtain assumption, including, but not limited to, the guidelines  
 51 specified in 40 C.F.R. part 230 and the public interest review  
 52 criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other  
 53 requirement adopted pursuant to the authority granted in this  
 54 subsection for purposes of obtaining assumption may not become  
 55 effective or otherwise enforceable until the United States  
 56 Environmental Protection Agency has approved the state's  
 57 assumption application. This legislative authority is intended  
 58 to be sufficient to enable the department to assume and

Page 2 of 4

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

9-00612D-18

20181402\_\_

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

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

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

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

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

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

9-00612D-18

20181402\_\_

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18

Meeting Date

Bill Number (if applicable)

Topic SB 1402

Amendment Barcode (if applicable)

Name John Treitt

Job Title Dep. Sec. of Regulatory at FDEP

Address 3900 Commonwealth Blvd

Phone

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Tallahassee

Fl

32399

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FDEP

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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S-001 (10/14/14)



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

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2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Julie Wraithmell

Job Title Interim Executive Director

Address 308 N Monroe St

Phone \_\_\_\_\_

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Tall

City

FL

State

32301

Zip

Email 850-222-2473

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
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2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

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

Address 1674 UNIVERSITY PKWY #296

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SARASOTA FL 34243

City

State

Zip

Phone 941-323-2404

Email cullenasea@aol.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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-14-18

Meeting Date

1402

Bill Number (if applicable)

Topic Diedye + Fill

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222 9684

Street

Tallahassee FL 32301

Email rohan@flatus.com

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

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S-001 (10/14/14)

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

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

2-14-18

Meeting Date

SB 1402

Bill Number (if applicable)

Topic SB 1402

Amendment Barcode (if applicable)

Name Caitlin Brongel

Job Title Dir. of External Affairs

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Street

Phone (850) 539-5999

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City

FL

State

32333

Zip

Email caitlin.brongel@nwlwater.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Northwest Florida Water Management District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

2/14/18

Meeting Date

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

1402

Bill Number (if applicable)

Topic 404 delegation

Amendment Barcode (if applicable)

Name Katie Kelly

Job Title Government Affairs

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

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southwest FL water management District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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2/14/18  
Meeting Date

1402  
Bill Number (if applicable)

Topic 404 Assumption

Amendment Barcode (if applicable)

Name DAVID CHILDS

Job Title Legal Counsel

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Tallahassee FL 32301  
City State Zip

Email DAVIDC@H6SLAW.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA CHAMBER OF COMMERCE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic State Assumption of Federal Section 404

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews Ave

Street

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City

FL

State

33301

Zip

Email dwest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward 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.

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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic STATE Assumptions of 404

Amendment Barcode (if applicable)

Name Jim Spratt

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

Address PO Box 10011

Street

Phone 850-228-1296

TALLAHASSEE FL 32302

City

State

Zip

Email Jim@magnoliastrategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



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

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

2/14  
Meeting Date

1402  
Bill Number (if applicable)

Topic 404 Dredge and fill permitting

Amendment Barcode (if applicable)

Name Evan Power

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

Address 120 S. Monroe Street  
Street

Phone (850) 519-1062

Tallahassee FL 32301  
City State Zip

Email evan@rambaconsulting.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Neal Communities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic 404 Assumption

Amendment Barcode (if applicable)

Name Adam Lovejoy

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Johns River Water Management Dist.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18  
Meeting Date

SB 1402  
Bill Number (if applicable)

Topic 404 DELEGATION DREDGE & FILL

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/14/18

Meeting Date

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

1402

Bill Number (if applicable)

Topic Wetland permitting

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ENVIRONMENT FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

2-14-16 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)  
Meeting Date

SB 1402  
Bill Number (if applicable)

Topic Nat Re.

Amendment Barcode (if applicable)

Name Patricia Brigham

Job Title 1st VP

Address \_\_\_\_\_  
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City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/2018  
Meeting Date

1402  
Bill Number (if applicable)

Topic CWA permitting Delegation

Amendment Barcode (if applicable)

Name Thomas Hawkins

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic

DEP/ State Permitting

Amendment Barcode (if applicable)

Name

Jennifer Wilson

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Jennifer.Wilson@law.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

The Conservancy of Southwest Florida

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18

Meeting Date

1402

Bill Number (if applicable)

Topic Env. Resource Wetlands Permitting

Amendment Barcode (if applicable)

Name Aliki\* Moncrief \*(a-LEE-key)

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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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S-001 (10/14/14)



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

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

2/14/18

Meeting Date

SB 1402

Bill Number (if applicable)

Topic 404 Permitting Assumption

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Save the Manatee

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

2/14

Meeting Date

1402

Bill Number (if applicable)

Topic 404 Delegation

Amendment Barcode (if applicable)

Name Kari Hebrink

Job Title Legislative Counsel

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Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Homebuilders Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Lauren Book, Chair  
Appropriations Subcommittee on The Environment and Natural Resources

**Subject:** Committee Agenda Request

**Date:** January 23, 2018

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I respectfully request that **Senate Bill 1402**, relating to State Assumption of Federal Section 404 Dredge and Fill Permitting Authority, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons  
Florida Senate, District 9

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

---

BILL: SB 462

INTRODUCER: Senator Young and others

SUBJECT: Advanced Well Stimulation Treatment

DATE: February 13, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Favorable</b>
2.	Reagan	Betta	AEN	<b>Recommend: Favorable</b>
3.			AP	

---

**I. Summary:**

SB 462 prohibits the performance of advanced well stimulation treatments on oil or gas wells in the state. The bill defines the term “advanced well stimulation treatment” to include all stages of well intervention performed by injecting fluids into a rock formation:

- At pressure that is at or exceeds the fracture gradient of the rock formation and the purpose or effect is to fracture the formation to increase production or recovery from an oil or gas well, such as hydraulic fracturing or acid fracturing; or
- At pressure below the fracture gradient of the rock formation and the purpose or effect is to dissolve the formation to increase production or recovery from an oil or gas well, such as matrix acidizing.

The definition explicitly excludes techniques used for routine well cleanout work, well maintenance, or removal of formation damage due to drilling or production; or acidizing techniques used to maintain or restore the natural permeability of the formation near the wellbore.

The Department of Environmental Protection (DEP) may incur additional costs related to rulemaking to implement the ban provided in the bill. Such costs most likely can be absorbed within the DEP’s existing budget.

## II. Present Situation:

### **Production of conventional versus unconventional oil and gas resources: the use of well stimulation techniques**

Conventional oil and gas resources are found in permeable sandstone and carbonate reservoirs.<sup>1</sup> Wells have historically been drilled vertically, straight down into a rock formation to extract conventional resources. Whereas conventional resources are found in concentrated underground locations, unconventional resources are highly dispersed through impermeable or “tight” rock formations, such as shales and tight sands. To extract unconventional resources, drilling has shifted from vertical to horizontal or directional away from the reservoir and toward the source rock.

Well stimulation techniques are used in the production of both conventional and unconventional resources. The techniques can be focused solely on the wellbore for maintenance and remedial purposes or can be used to increase production from the reservoir.<sup>2</sup> The relatively recent development of horizontal or directional drilling in conjunction with the expanded use of well stimulation techniques has increased the production at oil or gas wells and has led to the profitable extraction of unconventional resources.<sup>3</sup> The three main well stimulation techniques are hydraulic fracturing, acid fracturing, and matrix acidizing.<sup>4</sup>

### ***Hydraulic Fracturing***

Hydraulic fracturing was developed in the 1940s to increase the production of conventional oil and gas resources. While the technique is not new, the composition of the fracturing fluids used in the process has evolved over time. Initially the fracturing fluids were oil-based and relied on a mixture of petroleum compounds, such as napalm and diesel fuels.<sup>5</sup> Modern hydraulic fracturing involves a fracturing fluid that is composed of a base fluid, in most cases water; additives, each designed to serve a particular function; and a proppant, such as sand. The composition of the fracturing fluid varies depending on the permeability and brittleness of the reservoir rock.<sup>6</sup> A hydraulic fracturing operation at a horizontal well involves four stages. The first is the “stage,” during which a portion of the well is isolated to focus the fracture fluid pressure. The second is the “pad,” during which fracture fluid is injected without proppant to initiate and propagate the fracture. The proppant is then added to keep the fractures open. The third stage is the “flush,” during which fluid is injected without proppant to push any remaining proppant into the

---

<sup>1</sup> Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 2 (Apr. 22, 2015), available at <https://www.fas.org/sgp/crs/misc/R43148.pdf> (last visited Jan. 29, 2018).

<sup>2</sup> California Council on Science and Technology Lawrence Berkeley National Laboratory, *An Independent Assessment of Well Stimulation in California*, vol. 1, *Well stimulation technologies and their past, present, and potential future use in California*, 14 (January 2015) [hereinafter *CA Study*], available at <http://ccst.us/publications/2015/2015SB4-v1.php> (last visited Jan. 29, 2018).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 28.

<sup>5</sup> Gallegos, T.J., and Varela, B.A., United States Geological Survey, *Trends in Hydraulic Fracturing Distributions and Treatment Fluids, Additives, Proppants, and Water Volumes Applied to Wells Drilled in the United States from 1947 through 2010—Data Analysis and Comparison to the Literature*, Scientific Investigations Report 2014–5131, 7 (2015), available at <http://pubs.usgs.gov/sir/2014/5131/pdf/sir2014-5131.pdf> (last visited Jan. 29, 2018).

<sup>6</sup> *CA Study* at 48.

fractures. The fourth state is the “flowback,” during which the hydraulic fracturing fluids are removed and the fluid pressure dissipates.<sup>7</sup>

The Environmental Protection Agency (EPA) estimates that 25,000-30,000 new wells were drilled and hydraulically fractured annually in the United States between 2011 and 2014.<sup>8</sup> In 2016, hydraulically fractured horizontal wells accounted for 69 percent of all oil and natural gas wells drilled in the U.S.<sup>9</sup> Hydraulic fracturing in conjunction with horizontal or directional drilling techniques has led to a surge in domestic production of oil and gas resources in the last decade and, in 2012, the United States became the world’s top producer of petroleum and natural gas hydrocarbons.<sup>10</sup> The combination of horizontal drilling and hydraulic fracturing has contributed to increase in oil and natural gas production in the U.S., which are both expected to reach record levels in 2018.<sup>11</sup>

### ***Acid Fracturing***

Well stimulation techniques that use acid-based formulas are sometimes preferred in carbonate reservoirs.<sup>12</sup> Acid fracturing is a well stimulation technique that uses acidic fluids. Well operators pump the acidic fluids into a well at a pressure that exceeds the fracture gradient and, thus, fractures the rock. The acid etches the walls of the fracture and eliminates the need to use a proppant because the fractures remain open after pressure is released.<sup>13</sup> The produced fluids have a much lower acid content than the injected fluids because most of the acid that is injected is neutralized through a reaction with the rock.<sup>14</sup> As compared to hydraulic fracturing, acid fracturing is generally more successful in carbonate reservoirs because of the relatively high degree of natural fractures present.<sup>15</sup>

The purpose of an acid fracturing treatment is to create new or open existing fractures and dissolve formation material to create an irregular fracture surface that opens up new flow paths or enhances existing flow paths into the wellbore.<sup>16</sup> As compared to hydraulic fracturing, acid fracturing results in fractures that are relatively short in length.<sup>17</sup> One of the main factors that adversely affects acid fracture growth is fluid loss or acid leakoff. Acid leakoff can result in the enlargement of wormholes and natural fractures and can greatly increase the area from which

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<sup>7</sup> *Id.* at 42.

<sup>8</sup> U.S. Environmental Protection Agency (EPA), *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States*, 3-1 (Dec. 2016) [hereinafter *EPA Study*], available at <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990> (last visited Jan. 29, 2018).

<sup>9</sup> U.S. Energy Information Administration (EIA), *Hydraulically fractured horizontal wells account for most new oil and natural gas wells* (Jan. 30, 2018) <https://www.eia.gov/todayinenergy/detail.php?id=34732> (last visited Jan. 30, 2018).

<sup>10</sup> EIA, *Today in Energy, U.S. remained the world’s largest producer of petroleum and natural gas hydrocarbons in 2014*, (Apr. 7, 2015) <http://www.eia.gov/todayinenergy/detail.cfm?id=20692> (last visited Jan. 29, 2018).

<sup>11</sup> EIA, *Hydraulically fractured horizontal wells account for most new oil and natural gas wells* (Jan. 30, 2018).

<sup>12</sup> *CA Study* at 56.

<sup>13</sup> *Id.* at 28.

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

<sup>15</sup> *Id.* at 56.

<sup>16</sup> American Petroleum Institute, *Acidizing: Treatment in Oil and Gas Operations*, 3 (2014), available at <http://www.api.org/~media/files/oil-and-natural-gas/hydraulic-fracturing/acidizing-oil-natural-gas-briefing-paper-v2.pdf> (last visited Jan. 29, 2018).

<sup>17</sup> *CA Study* at 56.

fluid loss occurs, making fluid-loss control difficult and preventing acid from reaching untreated parts of the fracture.<sup>18</sup>

### ***Matrix Acidizing***

Dating back to 1895, well operators have been using matrix acidizing for over 100 years.<sup>19</sup> Drilling and production operations lead to formation damage.<sup>20</sup> Formation damage can include the plugging of perforations or the plugging of the rock matrix by debris from the well and well operations which restricts the flow of hydrocarbons into the wellbore.<sup>21</sup> Matrix acidizing is performed by pumping acidic fluids into a well at a pressure that does not exceed the fracture gradient.<sup>22</sup> Acidizing is often used for well maintenance and to remediate damage caused by well operation and drilling.<sup>23</sup> Operators use acid, which is very effective at dissolving carbonate minerals, to bypass formation damage around the well.<sup>24</sup> The acid is mostly neutralized because it reacts quickly with the limestone. Additionally, various acids are used to clean residential water wells to loosen or dissolve debris so that it can be pumped out of the well.<sup>25</sup>

If large volumes of acid are injected into carbonate formations, matrix acidizing can be used to increase the permeability of the formation beyond the zone impacted by drilling or production activities.<sup>26</sup> Matrix acidizing can result in limited stimulation of carbonate reservoir permeability beyond the near-wellbore region.<sup>27</sup> This technique is not commonly used for stimulation in unconventional reservoirs because it does not increase recovery enough in low permeability reservoirs to make production viable.<sup>28</sup> The penetration into the formation caused by matrix acidizing is less extensive than after use of a fracturing technique. However, in carbonate reservoirs matrix acidizing can create deeply penetrating channels, known as wormholes, and lead to deeper acid penetration into more permeable fractures of a naturally fractured reservoir.<sup>29</sup> To minimize the probability of acid entering into highly permeable sections of the formation, which could create channels into water-producing zones, careful treatment, design, and execution is required when performing a matrix acidizing treatment.<sup>30</sup>

### **Production of oil and gas resources in Florida**

Northwest and South Florida are the major oil and gas producing areas in the state. The first producing oil well was discovered in 1943 at a wellsite located in the Big Cypress Preserve in

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<sup>18</sup> Middle East & Asia Reservoir Review, vol. 4, *Stimulate the Flow*, 46 (Jan. 2003), available at [https://www.slb.com/resources/publications/industry\\_articles/mearr/num4\\_stimulate\\_flow.aspx](https://www.slb.com/resources/publications/industry_articles/mearr/num4_stimulate_flow.aspx) (last visited Jan. 29, 2018).

<sup>19</sup> *CA Study* at 69.

<sup>20</sup> Middle East & Asia Reservoir Review, vol. 4, *Stimulate the Flow*, 42 (Jan. 2003).

<sup>21</sup> *Id.*

<sup>22</sup> *CA Study* at 69.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.* at 69.

<sup>25</sup> National Groundwater Association, *Residential Well Cleaning* (2016), available at <http://www.ngwa.org/Documents/ClipCopy/Res-Well-Cleaning.pdf> (last visited Jan. 30, 2018).

<sup>26</sup> *CA Study* at 14.

<sup>27</sup> *Id.* at 28.

<sup>28</sup> *Id.* at 14.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> Middle East & Asia Reservoir Review, vol. 4, *Stimulate the Flow*, 44 (Jan. 2003).



South Florida.<sup>31</sup> Oil and gas resources were first discovered in Northwest Florida in 1970. There are two active oil and gas fields in Northwest Florida in Escambia and Santa Rosa counties, and five active oil and gas fields in South Florida in Lee, Hendry, Collier, and Miami-Dade counties.<sup>32</sup> While geologists believe that there may be large oil and natural gas deposits off Florida's western coast, the state enacted a drilling ban for state waters in 1990 and, in 2006, Congress banned the leasing of federal offshore blocks within 125 miles of Florida's western coast until at least 2022.<sup>33</sup> Additionally, federal law gives priority use of much of the area to the military for training.<sup>34</sup>

As of 2017, there were approximately 64 active producer wells in Florida.<sup>35</sup> The Department of Environmental Protection's (DEP) 2017 Annual Production Report totaled natural gas production at 773,864 million cubic feet and oil production at 618,891 thousand barrels in the state.<sup>36</sup> Proven oil and gas reserves both in Northwest and South Florida are composed of carbonate formations and reservoirs that have relatively high permeability.<sup>37</sup> Rather than hydraulic fracturing, well operators in the state prefer washing or flushing the formations to open carbonate pathways to enhance recovery of oil and gas resources.<sup>38</sup>

## Regulation of Well Stimulation Techniques

### *Federal*

There is limited direct federal regulation over oil and gas activities. In 2005, Congress passed the Energy Policy Act amending, in part, the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA).<sup>39</sup> The SDWA was amended to revise the definition of the term "underground injection" to specifically exclude the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations. The CWA was amended to characterize oil and gas exploration and production as "construction activities," thereby removing these operations from the scope of the CWA.<sup>40</sup> Thus, the Energy Policy Act effectively exempted non-diesel hydraulic fracturing from federal regulation.<sup>41</sup>

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<sup>31</sup> American Oil & Gas Historical Society, *First Florida Oil Well*, <http://aoghs.org/states/first-florida-oil-well/> (last visited Jan. 29, 2018).

<sup>32</sup> Florida Department of Environmental Protection (FDEP), *State Production Data* (2017), available at <https://floridadep.gov/water/oil-gas/documents/state-production-data> (last visited Jan. 29, 2018).

<sup>33</sup> EIA, Florida, *Profile Analysis: Petroleum*, <http://www.eia.gov/state/analysis.php?sid=FL> (last visited Jan. 29, 2018); see s. 377.242(1), F.S.

<sup>34</sup> EIA, Florida, *Profile Analysis: Petroleum*, <http://www.eia.gov/state/analysis.php?sid=FL> (last visited Jan. 29, 2018).

<sup>35</sup> FDEP, *State Production Data* (2017), available at <https://floridadep.gov/water/oil-gas/documents/state-production-data> (last visited Jan. 29, 2018).

<sup>36</sup> *Id.*

<sup>37</sup> FDEP, *Hydraulic Fracturing Background and Recommendations* (Sept. 29, 2015) available at [http://news.caloosahatchee.org/docs/Dep\\_Fracturing\\_Response\\_130118.pdf](http://news.caloosahatchee.org/docs/Dep_Fracturing_Response_130118.pdf) (last visited Jan. 29, 2018).

<sup>38</sup> *Id.*

<sup>39</sup> Energy Policy Act of 2005, H.R. 6, 109th Cong. (2005-2006).

<sup>40</sup> The EPA rule implementing the CWA amendment was challenged and the Ninth Circuit Court of Appeals vacated the rule. Oil and gas construction facilities remain subject to stormwater permitting requirements, as well as, NPDES permit requirements; see William J. Brady, *Hydraulic Fracturing Regulation in the United States: The Laissez-faire approach of the Federal government and varying state regulations*, 8 (Unv. of Denver Sturm College of Law), available at <http://www.law.du.edu/documents/faculty-highlights/Intersol-2012-HydroFracking.pdf> (last visited Jan. 29, 2018).

<sup>41</sup> Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009), available at



In an attempt to regulate hydraulic fracturing on federal and tribal lands, the Bureau of Land Management (BLM) in March of 2015, published final rules governing hydraulic fracturing.<sup>42</sup> The rules were to take effect on June 24, 2015; however, the United States District Court for the District of Wyoming granted a preliminary injunction and the rule was stayed.<sup>43</sup> In June of 2016, the court held that the BLM lacked authority to regulate hydraulic fracturing and set aside the final rules.<sup>44</sup> The court's ruling was appealed to the United States Court of Appeals Tenth Circuit which dismissed the appeal and remanded with directions to vacate the district court's opinion and dismiss the action without prejudice in light of the Bureau of Land Management's decision to rescind the final rules.<sup>45</sup>

While direct regulation over well stimulation techniques at the federal level is limited, there are several federal statutes that regulate the indirect impacts of oil and gas extraction. The EPA's Oil and Gas Extraction Effluent Guidelines and Standards regulate wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities.<sup>46</sup> The regulations apply to conventional and unconventional extraction with the exception of extractions of coalbed methane.<sup>47</sup> These standards are incorporated into the National Pollutant Discharge Elimination System (NPDES) regulatory framework.<sup>48</sup>

Because oil and gas activities may result in the release of hazardous substances into the environment at or under the surface in a manner that may endanger public health or the environment, these activities are regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).<sup>49</sup> While recovered petroleum or natural gas is exempt from the act, other hazardous substances that result from oil or gas production, such as fracturing fluids, fall under the act. If a release of such fluids occurs, the facility owner and operator could face liability under CERCLA.<sup>50</sup>

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<http://law.uh.edu/faculty/thester/courses/Emerging%20Tech%202011/Wiseman%20on%20Fracking.pdf> (last visited Jan. 29, 2018).

<sup>42</sup> Under the final BLM regulations, the term "hydraulic fracturing" is defined as "those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by applying fluids under pressure to fracture it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing."

<sup>43</sup> *State of Wyo. vs. U.S. Dept. of the Int.*, No. 2: 15-CB-043-SWS (D. Wyo. Sept. 30, 2015) (order granting preliminary injunction), available at <http://www.wyd.uscourts.gov/pdfforms/orders/15-cv-043%20130%20order.pdf> (last visited Jan. 29, 2018).

<sup>44</sup> *State of Wyo. vs. U.S. Dept. of the Int.*, No. 2: 15-CV-043-SWS (D. Wyo. June 21, 2016) (order on petitions for review of final agency action), available at <http://www.wyd.uscourts.gov/pdfforms/orders/15-cv-043-S%20Order.pdf> (last visited Jan. 29, 2018).

<sup>45</sup> *State of Wyo. vs. U.S. Dept. of the Int.*, No. 16-8068 (10th Cir. Sept. 21, 2017), available at <https://www.ca10.uscourts.gov/opinions/16/16-8068.pdf> (last visited Jan. 30, 2018).

<sup>46</sup> EPA, *Oil and Gas Extraction Effluent Guidelines, Rule Summary*, <http://www.epa.gov/eg/oil-and-gas-extraction-effluent-guidelines> (last visited Jan. 29, 2018).

<sup>47</sup> *Id.*

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

<sup>49</sup> Adam Vann, Brandon J. Murrill, & Mary Tiemann, Cong. Research Serv., R 43152, *Hydraulic Fracturing: Selected Legal Issues*, 12 (Sept. 26, 2014), available at <https://www.fas.org/sgp/crs/misc/R43152.pdf> (last visited Jan. 29, 2018).

<sup>50</sup> *Id.* at 13.

To ensure that employees who may be exposed to hazardous chemicals in the workplace are aware of the chemicals' potential dangers, manufacturers and importers must obtain or develop Material Safety Data Sheets (MSDS) for hydraulic fracturing chemicals that are hazardous according to the Occupational Safety and Health Administration (OSHA) standards. MSDS must be maintained for hazardous chemicals at each job site and must, at a minimum, include the chemical names of substances that are considered hazardous under the OSHA regulations.<sup>51</sup>

### *State*

States have primary jurisdiction and authority over the regulation of oil and gas activities. Almost all states with economically viable production wells have extensive regulatory programs in place for permitting and monitoring oil and gas activities. Recent advances in technology and the widespread use of well stimulation techniques, particularly hydraulic fracturing, have motivated some states to update and revise their oil and gas regulations to specifically address such techniques or to ban certain techniques altogether.<sup>52</sup> In 2012, Vermont became the first state to ban hydraulic fracturing.<sup>53</sup>

The Governor of New York in December of 2010 issued an executive order directing the New York State Department of Environmental Conservation (NDEC) to publish a revised Generic Environmental Impact Statement to consider if and under what conditions high-volume hydraulic fracturing should be allowed in the state of New York and which prohibited the issuance of permits to drill wells using such method until the statement was completed.<sup>54</sup> The NDEC published its final findings statement in 2015, which concluded that there were “no feasible or prudent alternatives [other than a ban which] would adequately avoid or minimize adverse environmental impacts and that address the scientific uncertainties and risks to public health from [high-volume hydraulic fracturing.]” The NDEC’s Findings Statement effectively banned high-volume hydraulic fracturing in the state of New York.<sup>55</sup>

In 2015, Maryland passed a two-year moratorium on hydraulic fracturing, which included a requirement that the Maryland Department of the Environment (MDE) adopt regulations for the hydraulic fracturing of a well for the exploration or production of natural gas.<sup>56</sup> The MDE

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<sup>51</sup> *Id.* at 22.

<sup>52</sup> Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009); see *State of Wyo. vs. U.S. Dept. of the Int.*, No. 2: 15-CB-043-SWS at 40 (D. Wyo. Sept. 30, 2015), for a list of states with regulations that address hydraulic fracturing.

<sup>53</sup> 29 V.S.A. § 571; 29 V.S.A. § 503, defines the “hydraulic fracturing” as “the process of pumping a fluid into or under the surface of the ground in order to create fractures in rock for the purpose of the production or recovery of oil or gas.”

<sup>54</sup> Governor Paterson, *Executive Order No. 41: Requiring Further Environmental Review of High-Volume Hydraulic Fracturing in the Marcellus Shale*, 9 CRR-NY 7.41 (Dec. 13, 2010), available at [https://govt.westlaw.com/nycrr/Document/Ib2187f0464611e09f330000845b8d3e?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/nycrr/Document/Ib2187f0464611e09f330000845b8d3e?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1) (last visited Jan. 29, 2018).

<sup>55</sup> NY Department of Environmental Conservation, *Final Supplemental Generic Environmental Impact Statement on the Oil, Gas, and Solution Mining Regulatory Program: Regulatory Program for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and other Low-Permeability Gas Reservoirs*, 42 (June 2015), available at <http://www.dec.ny.gov/energy/75370.html> (last visited Jan. 29, 2018); under New York law, the term “high-volume hydraulic fracturing” is defined as “the stimulation of a well using 300,000 or more gallons of water as the base fluid for hydraulic fracturing for all stages in a well completion, regardless of whether the well is vertical or directional, including horizontal.”

<sup>56</sup> Maryland Code § 14-107.1 (2015).

proposed rules, including a suite of best practices to be followed for oil and gas exploration and production in Maryland, which were intended to protect public health, safety, natural resources, and the environment. The MDE published rules in November of 2016, and the rules were reviewed by the Maryland General Assembly's Joint Committee on Administrative, Executive, and Legislative Review.<sup>57</sup> In 2017, Maryland passed a ban on hydraulic fracturing<sup>58</sup> for the exploration or production of oil or natural gas in the state and became the third state to ban the well stimulation technique.<sup>59</sup>

In the State of Florida, the DEP has regulatory authority over oil and gas resources. The Division of Water Resource Management (division) within the DEP oversees the permitting process for drilling production and exploration. The DEP adopted Chapters 62C-25 through 62C-30 of the Florida Administrative Code to implement and enforce the regulation of oil and gas resources. The division has jurisdiction and authority over all persons and property necessary to administer and enforce all laws relating to the conservation of oil and gas.<sup>60</sup> Drilling and exploration is not authorized or is subject to local governmental approval in tidal waters, near improved beaches, and within municipal boundaries.<sup>61</sup>

When issuing permits for oil and gas exploration or extraction, the division is required to consider the nature, character, and location of the lands involved; the nature, type, and extent of ownership of the applicant; and the proven or indicated likelihood of the presence of oil, gas, or related minerals on a commercially viable basis.<sup>62</sup> The DEP is required to ensure that all precautions are taken to prevent the spillage of oil or other pollutants in all phases of drilling for and extracting oil, gas, or other petroleum products.<sup>63</sup> Additionally, the DEP is authorized to issue rules requiring the drilling, casing, and plugging of wells in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.<sup>64</sup>

Before any person begins work other than environmental assessments or surveying at the site of a proposed drilling operation, a permit to drill is required and a preliminary site inspection must be conducted by the DEP.<sup>65</sup> An application for a permit to drill must include a proposed casing and cementing program and a location plat survey.<sup>66</sup> Each drilling permit is valid for one year and may be extended for an additional year.<sup>67</sup> Before a permit is granted, the owner or operator is required to post a bond or other form of security for each well. The bond or security amounts vary depending upon well depth.<sup>68</sup> In lieu of posting a bond or security for each well, the owner

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<sup>57</sup> Letter from Joint Cmte. to Secretary of the Department of the Environment (Dec. 29, 2016), *available at* [http://mde.maryland.gov/programs/Land/mining/marcellus/Documents/16-232P\\_to\\_Sec.pdf](http://mde.maryland.gov/programs/Land/mining/marcellus/Documents/16-232P_to_Sec.pdf) (last visited Jan. 29, 2018).

<sup>58</sup> Under Maryland law, the term “hydraulic fracturing” is defined as a stimulation treatment performed on oil and natural gas wells in low-permeability oil or natural gas reservoirs through which specially engineered fluids are pumped at high pressure and rate into the reservoir interval to be treated, causing fractures to open.

<sup>59</sup> Maryland Code § 14-107.1.

<sup>60</sup> Section 377.21(1), F.S.

<sup>61</sup> Section 377.24, F.S.

<sup>62</sup> Section 377.241, F.S.

<sup>63</sup> Section 377.22, F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Fla. Admin. Code R. 62C-26.003.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Fla. Admin. Code R. 62C-26.002.

or operator may file a blanket bond for the coverage of multiple operations, up to ten wells, in the amount of \$1,000,000.<sup>69</sup>

Before a well is used for its intended purpose, a permit to operate the well must be obtained.<sup>70</sup> Operating permits are valid for the life of the well; however, every five years the DEP is required to perform a comprehensive field inspection and the permit must be re-certified.<sup>71</sup> Each application and subsequent re-certification must include the appropriate fee; bond or security coverage; a spill prevention and cleanup plan; flowline specifications and an installation plan; containment facility certification; and additional reporting and data submissions, such as driller's logs and monthly well reports.<sup>72</sup>

A separate permit is not required for the performance of well stimulation techniques. Such techniques are regulated as workovers.<sup>73</sup> Rule 62C-25.002(61) of the Florida Administrative Code defines the term "workover" as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates." An operator is required to notify the DEP before commencing a workover procedure and must submit a revised Well Record<sup>74</sup> to the DEP within 30 days after the workover.<sup>75</sup> In December of 2013, the DEP received a workover notice proposing use of an enhanced extraction procedure and requested that the company that submitted the notice not complete the procedure until the DEP could review the procedure.<sup>76</sup> The company ignored the DEP's request and commenced with the procedure. Consequently, the DEP issued a cease and desist order.<sup>77</sup> The DEP fined the company \$25,000 for violating the cease and desist order.<sup>78</sup>

A person that violates any statute, rule, regulation, order, or permit of the division relating to the regulation of oil or gas resources or who refuses inspection by the division is liable for damages caused to the air, waters, or property of the state; for the reasonable costs of tracing the source of the discharge and for controlling and abating the source and the pollutants; and for the costs of restoring the air, waters, and property.<sup>79</sup> Such persons are also subject to judicial imposition of a

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<sup>69</sup> *Id.*

<sup>70</sup> Fla. Admin. Code R. 62C-26.008.

<sup>71</sup> Fla. Admin. Code R. 62C-25.006 and R. 62C-26.008.

<sup>72</sup> Fla. Admin. Code R. 62C-26.008.

<sup>73</sup> *See, e.g.*, s. 377.22, F.S., requiring the division to adopt rules to "regulate the shooting, perforating, and chemical treatment of wells" and to "regulate secondary recovery methods, in the introduction of gas, air, water, or other substance in producing formations;" and s. 377.26, F.S., requiring the division to "take into account technological advances in drilling and production technology, including, but not limited to, horizontal well completions in the producing formation using directional drilling methods."

<sup>74</sup> Fla. Admin. Code R. 62C-26.008.

<sup>75</sup> Fla. Admin. Code R. 62C-29.006.

<sup>76</sup> *State of Florida Department of Environmental Protection vs. Dan A. Hughes Company, L.P.* OGC File No. 14-0012 (April 8, 2014), available at [https://www.doah.state.fl.us/FLAID/DEP/2014/DEP\\_14-0012\\_05162014\\_014716.pdf](https://www.doah.state.fl.us/FLAID/DEP/2014/DEP_14-0012_05162014_014716.pdf) (last visited Jan. 30, 2018).

<sup>77</sup> *Id.*

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

<sup>79</sup> Section 377.37(1)(a), F.S.

civil penalty of up to \$10,000 for each offense.<sup>80</sup> Each day during any portion of which a violation occurs constitutes a separate offense.<sup>81</sup>

### ***Local***

As most states with oil and gas resources have extensive regulatory programs governing oil and gas activities, the issue as to what extent the local governments within those states may regulate oil and gas activities within their boundaries has arisen. In some states, local governments have banned or limited the use of certain well stimulation techniques with varying degrees of success. In Colorado a number of municipalities passed bans on hydraulic fracturing within their city limits, but the Colorado Supreme Court, finding that the cities' regulations were preempted by state law, overturned the city of Longmont's ban and the city of Fort Collins's five year moratorium on fracking and the storage and disposal of fracking wastes within city limits.<sup>82</sup> In Pennsylvania similar bans were passed, and Pennsylvania state courts held that municipalities retain their authority to limit oil and gas development within their borders, effectively authorizing local governments to regulate the "where, but not the how, of hydrocarbon recovery."<sup>83</sup>

While cities and counties do not operate oil and gas permitting programs in Florida, some through their land use regulations or zoning ordinances require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.<sup>84</sup> When authorizing oil and gas activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.<sup>85</sup> Section 377.24(5), F.S., restricts the DEP from issuing a permit for drilling within the corporate limits of a municipality unless the municipality adopts a resolution approving the permit. Six municipalities, Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills, and thirteen counties, Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton, have banned one or more forms of well stimulation techniques by ordinance.<sup>86</sup> Additionally, many other

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See *City of Longmont, et. al v. Colo. Oil and Gas Ass'n*, No. 15SC667 (May 2, 2016); see *City of Fort Collins v. Colo. Oil and Gas Ass'n*, No. 15SC668 (May 2, 2016), available at [https://www.courts.state.co.us/Courts/Supreme\\_Court/Case\\_Announcements/](https://www.courts.state.co.us/Courts/Supreme_Court/Case_Announcements/) (last visited Jan. 29, 2018).

<sup>83</sup> David L. Schwan, *Preemption Update: Local Attempts to Preempt State Regulation of Hydraulic Fracturing*, 6 (Jan. 2015), available at [http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015-joint-cle/written\\_materials/01\\_fracked\\_up\\_preemption\\_update.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015-joint-cle/written_materials/01_fracked_up_preemption_update.authcheckdam.pdf) (last visited Jan. 29, 2018).

<sup>84</sup> See, e.g., Lee County's Land Development Code §§ 34-1651 and 34-145(c).

<sup>85</sup> *Id.*

<sup>86</sup> Ordinance No. 2015-19 bans well stimulation within and below the corporate boundaries of the Village of Estero; Chapter 4, Article VI, Division 15, Section 4-1380 of Bonita Spring's Land Development Code bans well stimulation; Article IV, Section 13-1000 of Coconut Creek's Land Development Code bans well stimulation; Ordinance §3.23 prohibits well stimulations within the City of Cape Coral's corporate limits; Ordinance No. 2016-08 prohibits extreme well stimulation within the City of Dade; Ordinance No. 1310-16 prohibits the use of land for hydraulic fracturing within the City of Zephyrhills; §77.13.5 of Alachua County's Code of Ordinances prohibits extraction of oil and natural gas; §311 of Bay County's Land Development Regulation prohibits hydraulic fracturing in all zone districts in unincorporated Bay County; §46-375 of Brevard County's Code of Ordinances prohibits well stimulations; §66-133 of Citrus County's Code of Ordinances bans any form of well stimulation; §317.03 of Indian River County's Code of Ordinances prohibits well stimulations; §4.12.3 of Osceola County's Land Development Code prohibits oil and gas exploration that uses well stimulation; §27-193 of Broward County's Code of Ordinances prohibits extreme well stimulation; §67.441 of Martin



counties and cities have passed resolutions supporting various types of bans and moratoriums relating to well stimulation techniques.<sup>87</sup>

### Environmental Concerns

There are a variety of environmental concerns relating to well stimulation techniques. Potential impacts and concerns include: groundwater or surface water contamination; stress on water supplies; inadequate wastewater management and disposal; and air quality degradation.<sup>88</sup> Because well stimulation techniques are applied to so many types of underground formations using a variety of methods and fluids, environmental impacts vary depending on factors such as the toxicity of the fluid used; the closeness of the fracture zone to underground drinking water; the existence of a barrier between the fracture formation and other formations; and how wastewater is disposed.<sup>89</sup>

### Water Quality

The EPA estimated that of the approximately 275,000 wells that have been hydraulically fractured in 25 states between 2000 and 2013, an estimated 21,900 or eight percent were within one mile of at least one public water system groundwater well or surface water intake.<sup>90</sup> As a result of fracturing, sources of drinking water may be contaminated through the release of gas-phase hydrocarbons, in what is known as stray gas migration, as a result of the movement of liquid or gases out of the well if the well casing or cementing is too weak or if it fails.<sup>91</sup> The EPA concluded that “the injection of hydraulic fracturing fluids into wells with inadequate mechanical integrity [allowed for] gases or liquids to move to groundwater sources.”<sup>92</sup> While concerns related to inadequate well casing or cementing, are not unique to hydraulic fracturing, horizontally drilled, hydraulically fractured wells pose more production challenges because the well casing is subject to greater pressures.<sup>93</sup> The National Ground Water Association recommends water well owners test their water wells prior to the operation of oil and gas well installations to provide a baseline for comparison after oil and gas production.<sup>94</sup>

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County’s Code of Ordinances prohibits high-pressure well stimulation; §33-437 of Miami-Dade County’s Code of Ordinances prohibits well stimulations; §58-489 of Pinellas County’s Code of Ordinances prohibits well stimulation; Policy 6.1.5.7 of St. Lucie County’s Code of Ordinances prohibits high-intensity petroleum operations; §50-42 of Volusia County’s Code of Ordinances prohibits high-pressure well stimulation; §6-34 of Wakulla County’s Code of Ordinances prohibits high intensity petroleum operations; §9-156 of Walton County’s Code of Ordinances prohibits extreme well stimulation.

<sup>87</sup> See Food & Water Watch, *Local Regulations Against Fracking*, <http://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#florida>, for a list of local governments that passed resolutions against fracking.

<sup>88</sup> EPA, *Natural Gas Extraction-Hydraulic Fracturing, Providing Regulatory Clarity and Protections Against Known Risks*, <http://www.epa.gov/hydraulicfracturing> (last visited Jan. 29, 2018).

<sup>89</sup> Hannah Wiseman, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*, 20 FORDHAM ENVTL. L. REV. 115 (2009).

<sup>90</sup> EPA Study at 2-14.

<sup>91</sup> Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Technol. 8334-8348, 8336 (Mar. 2014), available at <http://pubs.acs.org/doi/abs/10.1021/es405118y> (last visited Jan. 29, 2018).

<sup>92</sup> EPA Study at 10-3.

<sup>93</sup> Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 8 (Apr. 22, 2015).

<sup>94</sup> National Ground Water Association, *Water Wells in Proximity to Natural Gas or Oil Development* (2016), available at <http://www.ngwa.org/Documents/ClipCopy/Water-Wells-Proximity.pdf> (last visited Jan. 30, 2018).

Mitigating measures, such as extending the casing farther below groundwater resources and pressure testing the well casing before the injection of fluids, may work to prevent well casing failures. Blowout preventers also help control and prevent pressure build-ups. Furthermore, hydraulically fractured wells in shale formations are usually drilled deeper than vertical wells and, therefore, the vertical separation between the formation and the drinking water resource is usually greater.<sup>95</sup> Thousands of feet of rock layers typically overlay the produced portion of shale and serve as a barrier to contamination.<sup>96</sup> The vast majority of Florida's public water supply is obtained from groundwater sources, specifically from the Floridan aquifer system that underlies the State of Florida.<sup>97</sup> Areas in which oil and gas have been extracted have an upper confining unit that is generally greater than 100 feet, which may serve as a barrier to contamination.<sup>98</sup>

Fractures created during hydraulic fracturing can intersect nearby wells or their fracture networks, resulting in the flow of fluids into those wells and to underground drinking water resources. These "frac-hits" are more likely to occur if wells are close to each other or are on the same well pad.<sup>99</sup> The likelihood of a frac-hit is less than 10 percent in hydraulically fractured wells more than 4,000 feet apart, while likelihood is nearly 50 percent in wells that are less than 1,000 feet apart.<sup>100</sup> In Florida, horizontal wells and associated drilling units that are deeper than 7,000 feet have more stringent spacing requirements.<sup>101</sup>

Surface water contamination may occur because of the inadequate storage and disposal of produced water. Produced water is the water that comes to the surface naturally as part of the oil and gas production process. For a hydraulically fractured well the produced water includes the fracturing fluids or flowback. Approximately 10-40 percent of the volume of injected fracturing fluids returns to the surface after hydraulic fracturing.<sup>102</sup> In most produced waters, the concentrations of toxic elements, such as radioactive radium, are positively correlated with salinity, which suggests that many of the potential water quality issues associated with produced waters may be attributable to the geochemistry of the brines within the shale formations.<sup>103</sup>

As the use of hydraulic fracturing has increased, so has the volume of wastewater generated. Spills of produced water do occur and can result in large volumes or high concentrations of chemicals reaching groundwater sources.<sup>104</sup> The EPA concluded that spills generally occur at one to ten percent of hydraulically fractured or active wells, with about seven percent of such

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<sup>95</sup> Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 7 (Apr. 22, 2015).

<sup>96</sup> *Id.*

<sup>97</sup> DEP, *Aquifers*, <https://fldep.dep.state.fl.us/swapp/Aquifer.asp> (last visited Jan. 29, 2018).

<sup>98</sup> U.S. Geological Survey (USGS), *Conceptual Model of the Floridan*, <http://fl.water.usgs.gov/floridan/conceptual-model.html> (last visited Jan. 29, 2018).

<sup>99</sup> *EPA Study* 6-71.

<sup>100</sup> *Id.* 10-18.

<sup>101</sup> Fla. Admin. Code R. 62C-26.004(5).

<sup>102</sup> Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8340 (2014).

<sup>103</sup> *Id.*

<sup>104</sup> *EPA Study* at 10-3.

spills reaching surface water or groundwater.<sup>105</sup> In Florida, any spill of waste material must be immediately reported to the division and the appropriate federal agencies, and the owner or operator is responsible for the costs of cleanup or other damage incurred.<sup>106</sup>

### ***Water Supply***

The amount of water used during the performance of a hydraulic fracturing treatment depends on the well depth, formation geology, and the composition of the fluids injected. In some cases, over 90 percent of the fracturing fluid is water and each hydraulically fractured well can require thousands to millions of gallons of water.<sup>107</sup> While the total water use for hydraulic fracturing is relatively low compared to other water users,<sup>108</sup> wells that are good candidates for such techniques are usually located near the same water source and, as a result, the collective impact of water withdrawals may result in increased competition among users.<sup>109</sup> To decrease the competition among users, some states have implemented pilot projects evaluating the feasibility of reusing produced waters or other brackish or wastewaters.<sup>110</sup> The reuse of wastewater, however, is often limited by the amount of wastewater that is available.<sup>111</sup> The volume of produced water from a single well is relatively small compared to the volume of water needed to fracture a well.<sup>112</sup>

### ***Wastewater Management and Disposal***

The vast majority of produced water is disposed of using injection wells. Injection wells are permitted under the Underground Injection Control (UIC) program.<sup>113</sup> The goal of the UIC program is the effective isolation of injected fluids from underground sources of drinking water.<sup>114</sup> Class II injection wells are designed to inject fluids associated with the production of oil and natural gas or fluids used to enhance hydrocarbon recovery. While the injection of fracturing fluids, unless the fluid contains diesel, is exempt from the UIC program, the wastewater from oil and gas operations is not exempt.<sup>115</sup> As unconventional oil and gas wells are being drilled at rapid rates, space for underground injection wells is becoming limited in some areas. In Florida there are 14 active Class II disposal wells, with an average disposal rate per well of 246,000 gallons per day.<sup>116</sup>

Another issue that is developing with the increase in the number of injection wells is the concern that the deep-well disposal of oil and gas production wastewater is responsible for seismic

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<sup>105</sup> *Id.* at 10-9.

<sup>106</sup> Section 377.371, F.S.

<sup>107</sup> *EPA Study* at ES-6.

<sup>108</sup> Avner Vengosh, Robert B. Jackson, Nathaniel Warner, Thomas Darrah, & Andrew Kondash, *A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States*, American Chemical Society, 48 Env. Sci. & Techol. 8334-8348, 8343 (2014).

<sup>109</sup> Hannah Wiseman, *Risk and Response in Fracturing Policy*, 84 Unv. of Col. L. Rev. 729-817, 776 (2009), available at [http://lawreview.colorado.edu/wp-content/uploads/2013/11/11.-Wiseman\\_For-Printer\\_s.pdf](http://lawreview.colorado.edu/wp-content/uploads/2013/11/11.-Wiseman_For-Printer_s.pdf) (last visited Jan. 29, 2018).

<sup>110</sup> *Id.* at 770.

<sup>111</sup> *EPA Study* at 10-6.

<sup>112</sup> *Id.*

<sup>113</sup> EPA, Underground Injection Control Program, <http://water.epa.gov/type/groundwater/uic/> (last visited Jan. 29, 2018).

<sup>114</sup> *Id.*

<sup>115</sup> EPA, *Natural Gas Extraction-Hydraulic Fracturing, Underground injection of waste disposal fluids from oil and gas wells (Class II wells)*, <http://www.epa.gov/hydraulicfracturing> (last visited Jan. 29, 2018).

<sup>116</sup> *EPA Study* at 8-24.



activity in certain areas.<sup>117</sup> The Oklahoma Geological Survey determined that the primary suspected source of triggered seismicity is from the injection of produced water associated with oil and gas production in disposal wells.<sup>118</sup>

Additionally, in some states the produced water is being sent to treatment facilities that are not equipped to treat wastewater from hydraulically fractured wells.<sup>119</sup> In June of 2016, the EPA, under the authority of the Clean Water Act, published final rules for the oil and gas extraction category. The rules establish pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas facilities to publicly owned treatment works.<sup>120</sup>

### *Air Quality*

The key emissions associated with unconventional oil and natural gas production include methane, volatile organic compounds (VOCs), nitrogen oxides, sulfur dioxide, particulate matter, and various hazardous air pollutants.<sup>121</sup> In 2012, the EPA issued the first federal air standards for hydraulically fractured natural gas wells.<sup>122</sup> The New Source Performance Standards required reductions in VOC emissions from hydraulically fractured natural gas wells.<sup>123</sup>

In May of 2016, the EPA issued three rules which together seek to curb emissions of methane, VOCs, toxins, and air pollutants, such as benzene, from new, reconstructed, and modified oil and gas sources.<sup>124</sup> The final rule requires compressor stations to monitor leaks, also known as “fugitive emissions,” four times a year and requires owners or operators to find and repair such leaks, which can be a significant source of both methane and VOC pollution.<sup>125</sup> The rule phases in requirements for a process known as “green completion” to capture emissions from hydraulically fractured wells. The EPA expects that implementation of the rule will reduce air pollutants and toxins, as well as, provide health benefits related to reductions in fine particle pollution and ozone toxics, along with improvements in visibility.<sup>126</sup> In June of 2017, the EPA

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<sup>117</sup> See Peter Folger & Mary Tiemann, Cong. Research Serv., R 43836, *Human-Induced Earthquakes from Deep-Well Injection: A Brief Overview*, (Sept. 30, 2016), available at <https://www.fas.org/sgp/crs/misc/R43836.pdf> (last visited Jan. 29, 2018).

<sup>118</sup> Oklahoma Geological Survey, *Statement on Oklahoma Seismicity* (Apr. 21, 2015), [http://wichita.ogs.ou.edu/documents/OGS\\_Statement-Earthquakes-4-21-15.pdf](http://wichita.ogs.ou.edu/documents/OGS_Statement-Earthquakes-4-21-15.pdf) (last visited Jan. 29, 2018).

<sup>119</sup> Hannah Wiseman, *Risk and Response in Fracturing Policy*, 84 *Unv. of Col. L. Rev.* 729-817, 768-769 (2009).

<sup>120</sup> EPA, *Unconventional Extraction in the Oil and Gas Industry*, <http://www2.epa.gov/eg/unconventional-extraction-oil-and-gas-industry> (last visited Jan. 29, 2018).

<sup>121</sup> Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 9 (Apr. 22, 2015).

<sup>122</sup> *Id.*

<sup>123</sup> EPA, *Controlling Air Pollution from the Oil and Natural Gas Industry*, <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry> (last visited Jan. 29, 2018).

<sup>124</sup> EPA, *EPA's Actions to Reduce Methane Emissions from the Oil and Gas Industry: Final Rules and Draft Information Collection Request*, <https://www.epa.gov/sites/production/files/2016-09/documents/nsps-overview-fs.pdf> (last visited Jan. 29, 2018).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

proposed to stay the requirements relating to fugitive emissions, well site pneumatic pump standards, and certification of closed vent systems by a professional engineer for two years.<sup>127</sup>

### III. Effect of Proposed Changes:

The bill bans the performance of advanced well stimulation treatments in the state and clarifies that a permit for drilling or operating a well does not authorize the performance of advanced well stimulation treatments.

The bill defines the term “advanced well stimulation treatment” to include all stages of well intervention performed by injecting fluids into a rock formation:

- At pressure that is at or exceeds the fracture gradient of the rock formation and the purpose or effect is to fracture the formation to increase production or recovery from an oil or gas well, such as hydraulic fracturing or acid fracturing; or
- At pressure below the fracture gradient of the rock formation and the purpose or effect is to dissolve the formation to increase production or recovery from an oil or gas well, such as matrix acidizing.

The definition explicitly excludes techniques used for routine well cleanout work, well maintenance, or the removal of formation damage due to drilling or production, or acidizing techniques used to maintain or restore the natural permeability of the formation near the wellbore.

The bill clarifies that the ban only applies to oil and gas wells.

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.

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<sup>127</sup> Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements, 82 Fed. Reg. 27,645 (June 16, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-06-16/pdf/2017-12698.pdf> (last visited Jan. 30, 2018).

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

None.

**B. Private Sector Impact:**

The bill bans certain techniques used to increase production or recovery from an oil or gas well. The fiscal impact of the ban is indeterminate at this time.

**C. Government Sector Impact:**

The Department of Environmental Protection (DEP) may incur additional costs related to amending Rules 62C-25 through 30 of the Florida Administrative Code to implement the ban provided in the bill. Such costs most likely can be absorbed within DEP's existing budget.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 377.19 of the Florida Statutes.

This bill creates section 377.2405 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 Young

18-00084-18

2018462\_\_

1 A bill to be entitled  
 2 An act relating to advanced well stimulation  
 3 treatment; amending s. 377.19, F.S.; defining the term  
 4 "advanced well stimulation treatment"; conforming a  
 5 cross-reference; creating s. 377.2405, F.S.;  
 6 prohibiting the performance of advanced well  
 7 stimulation treatments; clarifying that permits for  
 8 drilling or operating a well do not authorize the  
 9 performance of advanced well stimulation treatments;  
 10 providing applicability; providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Present subsections (1) through (32) of section  
 15 377.19, Florida Statutes, are redesignated as subsections (2)  
 16 through (33), respectively, present subsection (5) of that  
 17 section is amended, and a new subsection (1) is added to that  
 18 section, to read:  
 19 377.19 Definitions.—As used in ss. 377.06, 377.07, and  
 20 377.10-377.40, the term:  
 21 (1) "Advanced well stimulation treatment" means all stages  
 22 of a well intervention performed by injecting fluids into a rock  
 23 formation:  
 24 (a) At pressure that is at or exceeds the fracture gradient  
 25 of the rock formation and the purpose or effect is to fracture  
 26 the formation to increase production or recovery from an oil or  
 27 gas well, such as hydraulic fracturing or acid fracturing; or  
 28 (b) At pressure below the fracture gradient of the rock  
 29 formation and the purpose or effect is to dissolve the formation

Page 1 of 2

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

18-00084-18

2018462\_\_

30 to increase production or recovery from an oil or gas well, such  
 31 as matrix acidizing.  
 32  
 33 The term does not include techniques used for routine well  
 34 cleanout work, well maintenance, or removal of formation damage  
 35 due to drilling or production, or acidizing techniques used to  
 36 maintain or restore the natural permeability of the formation  
 37 near the wellbore.  
 38 (6) (5) "Gas" means all natural gas, including casinghead  
 39 gas, and all other hydrocarbons not defined as oil in subsection  
 40 (16) (15).  
 41 Section 2. Section 377.2405, Florida Statutes, is created  
 42 to read:  
 43 377.2405 Advanced well stimulation treatments.—  
 44 (1) BAN.—The performance of advanced well stimulation  
 45 treatments is prohibited in this state. A permit for drilling or  
 46 operating a well does not authorize the performance of advanced  
 47 well stimulation treatments.  
 48 (2) APPLICABILITY.—This section only applies to wells  
 49 regulated pursuant to chapter 377.  
 50 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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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)

2-14-18

Meeting Date

462

Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Exec Dir

Address 919 Old Bainbridge Rd

Phone 850-888-2505

Street

Tallahassee

FL

32303

City

State

Zip

Email admin@rethinkenergyflorida.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing BeThink Energy Florida

(Not needed)

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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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

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

Address 1674 UNIVERSITY PKwy #296 Phone 941-323-2404  
Street  
SARASOTA FL 34243 Email cullenassa@aol.com  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

462

Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Emily Devore

Job Title Legislative Issues Coordinator

Address 919 Old Bainbridge Rd.  
Street

Phone 904-338-2817

Tallahassee  
City

FL  
State

32303  
Zip

Email emilydevore@outlook.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ReThink Energy 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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-14-18

Meeting Date

462

Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Legislative Director

Address 1203 Buckingham Dr

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-766-7309

Email brian@rethinkenergyflorida.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Floridians Against Fracking

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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S-001 (10/14/14)



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

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

2-14-2018

Meeting Date

462

Bill Number (if applicable)

Topic Fracking Ban

Amendment Barcode (if applicable)

Name Susan Glickman

Job Title Florida Director

Address PO Box 310

Phone 727-7429003

Street

Indian Rocks Bch FL 33785

City

State

Zip

Email susan@cleanenergy.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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11/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic TRACKING

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766

Phone 954/850 4055

POUNDANO BEACH FLA 33061  
City State Zip

Email workingfolk@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing COMMUNICATIONS WORKER OF AMERICA COUNCIL OF FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

SB 462

Bill Number (if applicable)

Topic Fracking ban

Amendment Barcode (if applicable)

Name Dr. Ana Ciereszko

Job Title Legislative director UFMDC

Address 11420 N. Kendall Drive

Phone 305 321 0016

Street

Miami

City

FL

State

33176

Zip

Email aciereszko@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

14 Feb 2018

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic Advanced Well Stimulation Treatment

Amendment Barcode (if applicable)

Name Roy Long

Job Title Electrician

Address 863 Carnation Dr

Street

Winter Park

City

FL

State

32787

Zip

Phone 407 948 2162

Email Roy@IBEW606.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

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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S-001 (10/14/14)

3015

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-14-18

Meeting Date

SB462

Bill Number (if applicable)

Topic Advanced Well Stimulation

Amendment Barcode (if applicable)

Name Amy Datz

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

Address 1130 Crestview Ave.

Street

Phone (850) 322-7599

Tallahassee, FL. 32303

City

State

Zip

Email amali.datz@mac.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Environmental Caucus of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

SB 462

Bill Number (if applicable)

Topic Advanced Well Stimulation

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.

Street

Phone 941-928-0278

Sarasota

City

FL

State

34243

Zip

Email aichildney@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Advocacy Institute For Children

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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2/14  
Meeting Date

462  
Bill Number (if applicable)

Topic DAVID MICA

Amendment Barcode (if applicable)

Name OIL & GAS E9P

Job Title DIRECTOR

Address 215 S. MONROE ST SE 800

Phone \_\_\_\_\_

Street

1411 A HASSE

FL

32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA PETROLEUM COUNCIL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-14-18

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic Advanced Well Stimulation

Amendment Barcode (if applicable)

Name Larry Kidd

Job Title

Address 220 Coleus Dr

Phone 407-273-3758

Street Orlando FL 32807

Email LKidd01@Aol.com

City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)



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

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

2/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name David Bryant

Job Title Electrician

Address 8853 Atter Ln.  
Street

Phone 904-928-3744

Jax. FL 32216  
City State Zip

Email davidbryant177@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

SB 462

Bill Number (if applicable)

Topic Fracking Ban

Amendment Barcode (if applicable)

Name Anne Harvey Holbrook

Job Title Attorney

Address 500 N. Maitland Ave.

Phone \_\_\_\_\_

Street

Maitland.

FL

32751

City

State

Zip

Email aholbrook@SaveTheManatee.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Save the Manatee

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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S-001 (10/14/14)

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

14-Feb-18  
Meeting Date

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

SB 462  
Bill Number (if applicable)

Topic Fracking Ban

Amendment Barcode (if applicable)

Name Ken Hays

Job Title Retired

Address 1935 Nanticoke Cir

Phone \_\_\_\_\_

Street

Tallahassee

FL

32303

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Citizens in favor of plentiful, potable water

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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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

462

Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Aliki\* Moncrief \*(a-LEE-key)

Job Title Executive Director

Address 1700 N. Monroe St. # 11-286

Phone 8506294656

Street

Flt

City

FL

State

32303

Zip

Email contact@fcvoters.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

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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S-001 (10/14/14)

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

2/14/2017

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic Fracking ban

Amendment Barcode (if applicable)

Name JENNIFER RUBIELLO

Job Title Director

Address 3110 1st Ave N, Suite 2H

Street

St. Petersburg, FL

City

State

33713

Zip

Phone 727-327-3130

Email jennifer@environmentflorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Environment 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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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

0462

Bill Number (if applicable)

Topic Anti-Fracking Bill

Amendment Barcode (if applicable)

Name Megan Girard

Job Title Electronic Associate

Address 1135 SE 32<sup>nd</sup> Ave

Street

Ocala FL 34771

City

State

Zip

Phone 352-497-7171

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

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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S-001 (10/14/14)

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

1:30pm

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic Advanced well stimulation treatment

Amendment Barcode (if applicable)

Name Stacy Cunningham

Job Title ELECTRONIC ASSOCIATE

Address 3495 SE 137<sup>th</sup> St.

Street

Summerfield

City

FL

State

34491

Zip

Phone 352 5729963

Email burgett.stacy@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

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.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/14/2018

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic ADVANCED WELL STIMULATION

Amendment Barcode (if applicable)

Name ROBERT HOFER

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

Address 5129 S.W. 177 ST.  
Street

Phone (352) 665-9052

ARCHER FL 32618  
City State Zip

Email gatorhofer@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

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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S-001 (10/14/14)



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

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

02/14/2018  
Meeting Date

SB-462  
Bill Number (if applicable)

Topic FRACKING BAN

Amendment Barcode (if applicable)

Name WILLIAM C. COGGER

Job Title EUROPEAN

Address 7061 OLD KINGS ROAD SOUTH  
Street

Phone (904) 586-2808

JACKSONVILLE FLORIDA 32217  
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing "MYSELF"

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

## CONSTITUTION REVISION COMMISSION

## APPEARANCE RECORD

(Deliver completed form to Commission staff)

02-14-2018

Meeting Date

Proposal Number (if applicable)

\*Topic Fracking

Amendment Barcode (if applicable)

\*Name Katherine J. HileyAddress 657 Sweetbriar DrivePhone 813-748-5467Oldsmar  
CityFlorida  
State34677  
ZipEmail Kathyhiley@yahoo.com\*Speaking: ☐ For ☐ Against ☐ Information OnlyWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? \_\_\_\_\_

Are you a registered lobbyist? ☐ Yes ☒ NoAre you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages 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.

Information submitted on this form is public record.

\*Required

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

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

2/14/18

Meeting Date

SB 462

Bill Number (if applicable)

Topic ADVANCED WELL STIMULATION

Amendment Barcode (if applicable)

Name GUENOA ABICENT (ABBOTT)

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AV

Phone 786-376-1181

Street

MIAMI

City

FL

State

33165

Zip

Email GUENOA.ABICENT@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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

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

2/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic Hydraulic Fracturing/Well Stimulation

Amendment Barcode (if applicable)

Name Jennifer Wilson

Job Title Attorney / Lobbyist

Address 101 E. Kennedy Noddy Side 4000  
Street

Phone 813-407-0703

Tampa FL 33602  
City State Zip

Email Jennifer.wilson@law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Conservancy of Southwest Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

2-14-18

Meeting Date

462

Bill Number (if applicable)

Topic fracking ban

Amendment Barcode (if applicable)

Name James Fogle

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-483-4800

Street

Gainesville

FL

32605

City

State

Zip

Email JWFWI@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-14-18

Meeting Date

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

SB 462

Bill Number (if applicable)

Topic NAT Re.

Amendment Barcode (if applicable)

Name Patricia Britham

Job Title 1st VP League of Women Voters of FL

Address 614 Wilkey St

Street

Phone 407-797-2562

Orlando FL

City

State

32804

Zip

Email patimbrigham@gmail

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of W

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

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

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

2/14/2018  
Meeting Date

462  
Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Thomas Hawkins

Job Title Policy & Planning Director

Address 308 N Monroe St  
Street

Phone 352 377 3141

Tallahassee, FL 32301  
City State Zip

Email thawkins@1000fol.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

462

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

\_\_\_\_\_  
Bill Number (if applicable)

Topic \_\_\_\_\_

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

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

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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S-001 (10/14/14)

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

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

2/14/18

Meeting Date

462

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Julie Wraithmole

Job Title Interim Executive Director

Address 308 N Monroe St

Street

Tall

City

FL

State

32301

Zip

Phone 850-202-2473

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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S-001 (10/14/14)

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

2/14/18  
Meeting Date

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

462  
Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Danielle Thomas

Job Title Staff in Field

Address 4301 Craigton Rd

Phone 880.320.0884

Street  
Pensacola FL 32504  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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

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

2-14-18

Meeting Date

SB 462

Bill Number (if applicable)

Topic Advanced Well Stimulation Treatment

Amendment Barcode (if applicable)

Name Barbara Haggerty

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

Address 16219 Fantasia Drive  
Street

Phone 813-391-4444

Tampa FL 33624  
City State Zip

Email bhaggerty312@yahoo.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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/18

Meeting Date

SB 462

Bill Number (if applicable)

Topic ADVANCED WELL SIMULATION

Amendment Barcode (if applicable)

Name BRITNI WEGMANN

Job Title TEACHER

Address 305 W CHELSEA ST  
Street

Phone 941-539-9036

TAMPA FL 33603  
City State Zip

Email BCWEGMANN@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14  
Meeting Date

58462  
Bill Number (if applicable)

Topic ADVANCED WELL STIMULATION TREATMENT Amendment Barcode (if applicable)

Name LEO HACCERTY

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

Address 16219 FANTASIA DRIVE Phone 813 787-6000  
Street

TAMPA FL 33624 Email LEOLEOBUCCHIO@YAHOO.COM  
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

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S-001 (10/14/14)

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

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

2/14/18  
Meeting Date

462  
Bill Number (if applicable)

Topic Advanced neu stimulation

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S Andrews Ave.

Phone 954-787-9293

Street

Fort Lauderdale  
City

FL  
State

33301  
Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

02/14/18

Meeting Date

462

Bill Number (if applicable)

Topic Ban Fracking

Amendment Barcode (if applicable)

Name Alexis Howard

Job Title Student

Address 2297 Shady Timbers Circle

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32304

Zip

Email ahoward01@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Rethink Energy Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

462

Bill Number (if applicable)

Topic HYDRAULIC FRACTURING

Amendment Barcode (if applicable)

Name KEVIN DOYLE

Job Title CONSUMER ENERGY ALLIANCE - FL DIRECTOR

Address 200 W College Ave #313

Phone 904-806-1764

Street

TALLAHASSEE, FL

32301

City

State

Zip

Email KDOYLE@CONSUMER ENERGY ALLIANCE.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CONSUMER ENERGY ALLIANCE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

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

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

Bill Number (if applicable) 462

Topic Advanced Well Stimulation

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

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S. Bronough

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

City

State

Zip

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

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S-001 (10/14/14)

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

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

2/14  
Meeting Date

462  
Bill Number (if applicable)

Topic Well Stimulation

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 W Adams

Phone 224-7173

Street

FLH

City

FL

State

37301

Zip

Email bbevis@air-

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

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

S-001 (10/14/14)

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

**JOINT COMMITTEE:**

Joint Committee on Public Counsel Oversight

**SENATOR DANA YOUNG**

18th District

February 6, 2018

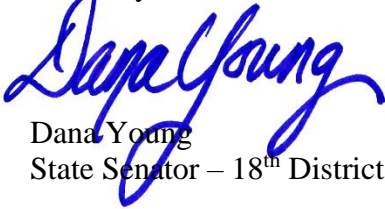
Senator Lauren Book, Chair  
Appropriations Sub. on the Environment and Natural Resources  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chairman Book,

My Senate Bill 462 relating to Advanced Well Stimulation Treatment has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young  
State Senator – 18<sup>th</sup> District

cc: Giovanni Betta, Staff Director – Approps. Sub. on the Environment and Natural Resources

**REPLY TO:**

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 301

**Case No.:**

**Caption:** Appropriations Subcommittee on Environment and Natural Resources

**Type:**

**Judge:**

**Started:** 2/14/2018 1:35:47 PM

**Ends:** 2/14/2018 2:56:06 PM

**Length:** 01:20:20

1:36:11 PM	Sen. Book (Chair)
1:37:50 PM	TAB 2 - S 1612
1:37:56 PM	Sen. Rader
1:39:15 PM	Sen. Hutson
1:39:33 PM	Sen. Rader
1:40:05 PM	Am. 855538
1:40:09 PM	Sen. Rader
1:40:43 PM	adopted
1:41:07 PM	S 1612 (cont.)
1:41:40 PM	Lane Stephens, Lobbyist, Florida Airboat Association
1:42:49 PM	Sen. Hutson
1:43:30 PM	Sen. Rader
1:44:09 PM	Sen. Book
1:44:44 PM	Sen. Hukill (Chair)
1:45:12 PM	TAB 1 - S 992
1:45:16 PM	Sen. Book
1:45:29 PM	Am. 452558
1:45:34 PM	Sen. Book
1:46:14 PM	Sen. Hukill
1:46:38 PM	adopted
1:46:47 PM	S 992 (cont.)
1:46:55 PM	Frank Bernadino, Lobbyist, Broward County (waives in support)
1:47:01 PM	Edgar Fernandez, Lobbyist, Palm Beach County (waives in support)
1:47:23 PM	Sen. Book
1:47:26 PM	Sen. Hukill
1:47:50 PM	Sen. Book (Chair)
1:48:06 PM	TAB 3 - S 1664
1:48:10 PM	Sen. Simmons
1:49:55 PM	Sen. Book
1:50:07 PM	David Cullen, Lobbyist, Sierra Club Florida (waives in support)
1:50:10 PM	Anne Harvey Holbrook, Attorney, Save the Manatee (waives in support)
1:50:19 PM	Sen. Book
1:50:49 PM	TAB 4 - S 1402
1:50:54 PM	Sen. Simmons
1:57:14 PM	Sen. Book
1:57:17 PM	Sen. Hutson
1:57:52 PM	Sen. Simmons
1:59:22 PM	Sen. Stewart
1:59:55 PM	Sen. Simmons
2:00:56 PM	Sen. Stewart
2:01:35 PM	Sen. Hutson
2:01:52 PM	John Truitt, Department Secretary of Regulatory, FDEP
2:02:38 PM	Sen. Book
2:03:14 PM	Julie Wraithmell, Interim Executive Director, Audubon Florida
2:05:55 PM	David Cullen, Lobbyist, Sierra Club Florida
2:09:40 PM	Sen. Hutson
2:10:10 PM	D. Cullen
2:10:35 PM	Sen. Hutson
2:10:55 PM	D. Cullen
2:11:15 PM	Rebecca O'Hara, Deputy General Counsel, Florida League of Cities (waives in support)
2:11:23 PM	Caitlin Brongel, Director of External Affairs, Northwest Florida Water Management District (waives in support)

2:11:30 PM Katie Kelly, Government Affairs, Southwest Florida Water Management District (waives in support)  
 2:11:45 PM David Childs, Legal Counsel, Florida Chamber of Commerce (waives in support)  
 2:11:48 PM Devon West, Policy Advisor, Broward County (waives in support)  
 2:11:52 PM Jim Spratt, Lobbyist, Associated Industries of Florida (waives in support)  
 2:11:57 PM Evan Power, Neal Communities (waives in support)  
 2:12:02 PM Adam Lovejoy, Government Affairs Director, St. Johns River Water Management District (waives in support)  
 2:12:13 PM Nancy Stephens, Lobbyist, Manufacturers Association of Florida (waives in support)  
 2:12:18 PM Jennifer Rubiello, Director, Environment Florida (waives against)  
 2:12:30 PM Patricia Brigham, 1st Vice President, League of Women Voters (waives against)  
 2:12:34 PM Thomas Hawkins, Policy and Planning Director, 1000 Friends of Florida (waives against)  
 2:12:49 PM Jennifer Wilson, Attorney/Lobbyist, The Conservancy of Southwest Florida (waives against)  
 2:13:36 PM Alik Moncrief, Executive Director, Florida Conservation Voters  
 2:15:02 PM Sen. Hutson  
 2:15:16 PM A. Moncreif  
 2:16:22 PM Sen. Hutson  
 2:17:15 PM Sen. Mayfield  
 2:18:37 PM Anne Harvey Holbrook, Staff Attorney, Save the Manatee (waives against)  
 2:18:42 PM Kari Hebrink, Legislative Counsel, Florida Homebuilders Association (waives in support)  
 2:18:50 PM Sen. Stewart  
 2:19:45 PM Sen. Simmons  
 2:22:49 PM Sen. Book  
 2:23:25 PM Recording Paused  
 2:35:51 PM Recording Resumed  
 2:36:40 PM TAB 5 - S 462  
 2:36:43 PM Sen. Book  
 2:37:10 PM Sen. Young  
 2:37:47 PM Sen. Book  
 2:38:00 PM Sen. Young  
 2:38:30 PM Sen. Book  
 2:38:46 PM Kim Ross, Executive Director, Rethink Energy Florida  
 2:39:47 PM David Cullen, Lobbyist, Sierra Club Florida  
 2:39:57 PM Emily Devore, Legislative Issues Coordinator, Rethink Energy Florida (waives in support)  
 2:40:08 PM Brian Lee, Legislative Director, Floridians Against Fracking  
 2:41:50 PM Susan Glickman, Florida Director, Southern Alliance for Clean Energy  
 2:43:24 PM Gail Marie Perry, Chair, Communications Worker of America Council of Florida (waives in support)  
 2:43:39 PM Dr. Ana Ciereszko, Legislative Director, UFMDC (waives in support)  
 2:43:46 PM Roy Long, Electrician (waives in support)  
 2:44:13 PM Amy Datz, Environmental Caucus of Florida  
 2:44:29 PM Mary Lynn Cullen, Legislative Liason, Advocacy Institute for Children (waives in support)  
 2:45:05 PM David Mica, Director, Florida Petroleum Council  
 2:48:01 PM Sen. Book  
 2:48:13 PM Larry Kidd, Citizen (waives in support)  
 2:48:20 PM David Bryant, Electrician (waives in support)  
 2:48:26 PM Anne Harvey Holbrook, Attorney, Save the Manatee (waives in support)  
 2:48:33 PM Ken Hays, Retired Citizen (waives in support)  
 2:48:40 PM Alik Moncrief, Executive Director, Florida Conservation Voters (waives in support)  
 2:48:47 PM Jennifer Rubiello, Director, Environment Florida (waives in support)  
 2:48:54 PM Megan Girard, Electronic Associate (waives in support)  
 2:49:01 PM Stacy Cunningham, Electronic Associate (waives in support)  
 2:49:06 PM Robert Hofer, Citizen (waives in support)  
 2:49:16 PM William Cogburn, Electrician (waives in support)  
 2:49:25 PM Katherine Hiley, Citizen (waives in support)  
 2:49:33 PM Gwenda Abbot, Services Technician (waives in support)  
 2:49:40 PM Jennifer Wilson, Attorney/Lobbyist, The Conservancy of Southwest Florida (waives in support)  
 2:49:51 PM James Ingle, Electrician (waives in support)  
 2:50:01 PM Patricia Brigham, 1st Vice President, League of Women Voters (waives in support)  
 2:50:09 PM Thomas Hawkins, Policy and Planning Director, 1000 Friends of Florida (waives in support)  
 2:50:13 PM Jess McCarty, Assistant County Attorney, Miami-Dade County (waives in support)  
 2:50:22 PM Doug Miller, Campaign Director, Rethink Florida Energy (waives in support)  
 2:50:28 PM Julie Wraithmell, Interim Executive Director, Audubon Florida (waives in support)  
 2:50:35 PM Danielle Thomas, Citizen (waives in support)

<b>2:50:39 PM</b>	Barbara Haggerty, Citizen (waives in support)
<b>2:50:44 PM</b>	Brittini Wegmann, Teacher (waives in support)
<b>2:50:48 PM</b>	Leo Haggerty, Citizen (waives in support)
<b>2:50:52 PM</b>	Devon West, Policy Advisor, Broward County (waives in support)
<b>2:50:56 PM</b>	Alexis Howard, Student, Rethink Energy Florida (waives in support)
<b>2:51:08 PM</b>	Kevin Doyle, Florida Director, Consumer Energy Alliance (waives against)
<b>2:51:16 PM</b>	Christopher Emmanuel, Policy Director, Florida Chamber of Commerce (waives against)
<b>2:51:23 PM</b>	Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives against)
<b>2:51:37 PM</b>	Sen. Stewart
<b>2:52:19 PM</b>	Sen. Book
<b>2:52:35 PM</b>	Sen. Young
<b>2:54:08 PM</b>	Sen. Book
<b>2:55:16 PM</b>	Sen. Stewart
<b>2:55:37 PM</b>	Sen. Hukill
<b>2:55:56 PM</b>	Sen. Book
<b>2:56:01 PM</b>	Adjourned



**The Florida Senate**  
State Senator René García  
36<sup>th</sup> District

**Please reply to:**

☐ **District Office:**

1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

February 13, 2018

The Honorable Lauren Book  
Chair, Appropriations Subcommittee on the Environment and Natural Resources  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Book,

Please excuse my absence from the Appropriations Subcommittee on the Environment and Natural Resources meeting for Wednesday, February 14, 2018. Due to a previous commitment, I will not be able to attend the meeting. Thank you for your understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García  
District 36

CC: Giovanni Betta  
Lisa Waddell

**Committees:** Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.