

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

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

Prepared By: The Professional Staff of the Committee on Rules

**BILL:** CS/CS/SB 1840

**INTRODUCER:** Rules Committee, Community Affairs Committee, and Military and Veterans Affairs, Space and Domestic Security Committee

**SUBJECT:** Development Permits

**DATE:** April 19, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon		<b>ms SPB 7142 as introduced</b>
2.	Anderson	Yeatman	CA	<b>Fav/CS</b>
3.	Ryon/Spaulding	Phelps	RC	<b>Fav/CS</b>
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 1840 requires counties and municipalities to attach disclaimers to development permits that include a condition that all other applicable state or federal permits must be obtained before the commencement of any development. These changes will ensure Florida is fully compliant with the National Flood Insurance Program administered by the Federal Emergency Management Agency.

The bill also revises the deadline for the holder of certain permits to notify the authorizing agency of automatic extension eligibility and provides for a three year extension of building permits for certain property owners within the Florida Keys Area of Critical State Concern in unincorporated Monroe County.

The bill expands the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility.

The bill amends several provisions relating to onsite sewage treatment and disposal systems (OSTDSs) in Monroe County to:

- Require Monroe County property owners who are not scheduled to be served by a central sewer by December 31, 2015, to comply with certain concentration level standards;
- Provide that a tested and certified OSTDS that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards;
- Allow Monroe County property owners that have recently installed a OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020; and
- Allow property owners who have paid connection fees or assessments for connection to a central sewer system, in an area scheduled to be served by a central sewer by December 31, 2015, the option of installing a holding tank with a high water alarm until they are able to connect to a central sewer system.

The bill substantially amends the following sections of the Florida Statutes: 125.022, 125.35, 166.033, and 381.0065. The bill also amends subsection (3) of section 24 of chapter 2012-205, Laws of Florida.

## II. Present Situation:

### Florida Compliance with National Flood Insurance Program Requirements

The Division of Emergency Management (Division) is administratively housed within the Executive Office of the Governor. The Division is a separate budget entity, as provided in the General Appropriations Act and must prepare and submit a budget request in accordance with chapter 216, Florida Statutes.<sup>1</sup> The Division is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities. The Director of the Division is appointed by, and serves at the pleasure of, the Governor and is the head of the Division for all purposes. The Division is tasked with administering programs to rapidly apply all available aid to communities stricken by an emergency and serves as a liaison with federal agencies and other public and private agencies.<sup>2</sup>

The State Emergency Management Act<sup>3</sup> establishes the powers of the Division. It tasks the Division with maintaining a comprehensive statewide program of emergency management efforts that includes coordinating efforts with the Federal Government, local governments, other state agencies, school boards, and private agencies that have a role in emergency management.<sup>4</sup> The statewide program of emergency management includes but is not limited to:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Assisting political subdivisions in preparing and maintaining emergency management plans;

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<sup>1</sup> Division of Emergency Management (Executive Office of the Governor), Fiscal Year 2013-14 Base Budget Review, <http://www.flsenate.gov/UserContent/Topics/IntensiveBudgetReview/ATD/DEMBBaseBudget.pdf>, last viewed March 29, 2013.

<sup>2</sup> Section 14.2016, F.S.

<sup>3</sup> Section 252.31, F.S.

<sup>4</sup> Section 252.35(1), F.S.

- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Instituting statewide public awareness programs;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Act.<sup>5</sup>

After a disaster, the Division conducts damage assessment surveys and advises the Governor on whether to declare an emergency and seek federal relief funds. The Division maintains a primary Emergency Operations Center (EOC) in Tallahassee. The EOC serves as the communications and command center for reporting emergencies and coordinating state response activities. The Division also operates the State Warning Point, a state emergency communications center staffed 24 hours each day. The center maintains statewide communications with county emergency officials.<sup>6</sup>

### National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by Congress in 1968 as a result of passage of the National Flood Insurance Act to address economic hardships caused by flood disasters. Congress found that it was "...uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible."<sup>7</sup> In response, NFIP was created as a voluntary program that provided affordable flood insurance for people that lived in communities that adopted floodplain management regulations that meet or exceed federal standards.<sup>8</sup> In most instances, homeowners buy flood policies from an insurance agent but in the event of a flood disaster the insurance company does not pay the claim, the Federal Government does. NFIP provides coverage up to \$250,000 for the home and \$100,000 for personal possessions for private dwellings<sup>9</sup> and up to \$500,000 for buildings and \$500,000 for property and belongings for commercial properties.<sup>10</sup>

- There are 459 Florida communities actively participating in NFIP;
- More than 2 million flood insurance policies; and
- More than \$471 billion in flood coverage in the state.<sup>11</sup>

In March 2012, FEMA expressed concern that HB 503 (2012) was inconsistent with federal law<sup>12</sup> that requires communities to review proposed developments to ensure they have received

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<sup>5</sup> Section 252.35, F.S.

<sup>6</sup> Florida Division of Emergency Management, Florida Disaster, [http://floridadisaster.org/about\\_the\\_division.htm](http://floridadisaster.org/about_the_division.htm), last viewed March 28, 2013.

<sup>7</sup> 42 U.S.C. § 4001(b)(1,2).

<sup>8</sup> 42 U.S.C. §§ 4012(c), 4022; 44 C.F.R. §§ 60.1, 60.2.

<sup>9</sup> Department of Homeland Security, FEMA, Reducing Damage from Localized Flooding: A Guide for Communities, p. 11-2, <http://www.fema.gov/pdf/fima/FEMA511-12-Chapter11.pdf>, last viewed March 28, 2013.

<sup>10</sup> *Id*

<sup>11</sup> *Id* at 1.

<sup>12</sup> 44 C.F.R. § 60.3(a)(2), *Id* at 1.

necessary permits pursuant to federal and state law. This requirement ensures that coordination occurs between levels of government on projects impacting flood plains and that all necessary permits have been secured before commencement of construction. FEMA warned that if HB 503 was implemented, Florida communities would be subject to challenge and face legal impediments as they tried to comply with NFIP requirements. If communities could not meet the requirements of NFIP, they could be subject to suspension from the program that would include the following consequences:

- No selling or renewing of flood insurance policies within a community that is not in compliance with NFIP requirements;
- Federal agencies would be prohibited from issuing grants, loans, or guarantees for the acquisition or construction of structures located in a Special Flood Hazard Area (SFHA);<sup>13</sup>
- Lending institutions may require private flood insurance for high-risk properties at significantly higher cost to the homeowner, assuming private insurance is even available in that area; and
- If a flood disaster occurs in a suspended community, many types of federal disaster assistance would not be available.<sup>14</sup>

### **Permit Extensions**

A permit extension was provided by the 2011 Florida Legislature, “in recognition of 2011 real estate market conditions,” extending “any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014,” and also “any local government-issued development order or building permit” (including certificates of levels of service), for a period of 2 years after its previously scheduled date of expiration.<sup>15</sup> This extension is in addition to any existing permit extension, but cannot exceed four years total.<sup>16</sup> To get this extension, the holder of such a permit or other authorization must have notified the authorizing agency in writing by December 31, 2011.<sup>17</sup>

The 2012 Florida Legislature revised the deadline for the holder of certain permits to notify the authorizing agency of automatic extension eligibility. The new deadline was December 31, 2012.<sup>18</sup>

### **County Authority to Lease a Professional Sports Franchise**

Section 125.35, F.S., authorizes the board of county commissioners to sell and convey any real or personal property, and to lease real property, belonging to the county, under certain circumstances. Additionally, the board of county commissioners is expressly authorized to “lease

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<sup>13</sup> This restriction applies to assistance from the Federal Housing Administration, the U.S. Department of Veterans Affairs, and the Small Business Administration, among other Federal agencies.

<sup>14</sup> *Id.* at 1.

<sup>15</sup> Section 79, ch. 2011-39, L.O.F. (HB 7207).

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

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

<sup>18</sup> Section 24, ch. 2012-205, L.O.F (HB 503).

a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20.”

### **Onsite Sewage Treatment and Disposal Systems**

The Bureau of Onsite Sewage Programs (Bureau), part of the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of onsite sewage treatment and disposal systems (OSTDSs) within the state.<sup>19</sup> The Bureau also licenses over 700 septic tank contractors and oversees 2.3 million onsite wastewater systems in Florida.<sup>20</sup>

In Florida, septic systems are referred to as OSTDSs. An OSTDS 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>21</sup> Septic tanks are tanks in the ground that 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, which do not require oxygen, in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.<sup>22</sup>

### **Florida Keys Area of Critical State Concern**

In 1972, the Legislature adopted the Environmental Land and Water Management Act, which provided the basis for the state to designate an Area of Critical State Concern. To be designated, an area must contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources.<sup>23</sup>

In 1979, Monroe County, including its municipalities and the Florida Keys, was designated as an Area of Critical State Concern pursuant to the “Florida Keys Area Protection Act.”<sup>24</sup> The legislative intent was to establish a land use management system for the Florida Keys that would:

- Protect the natural environment and improve the near shore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;

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<sup>19</sup> The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

<sup>20</sup> DOH, Division of Disease Control and Health Protection, *About Us*, <http://www.myfloridaeh.com/about/index.html> (last visited Apr. 6, 2013).

<sup>21</sup> See Department of Environmental Protection (DEP) *Wastewater: Septic Systems*, <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Apr. 6, 2013).

<sup>22</sup> EPA, *Primer for Municipal Wastewater Treatment Systems*, 2004, p. 22, available at [http://water.epa.gov/aboutow/owm/upload/2005\\_08\\_19\\_primer.pdf](http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf) (last visited Apr. 6, 2013).

<sup>23</sup> Section 380.05(2)(a), F.S.

<sup>24</sup> Section 380.0552(3), F.S.

- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.

In 1996, Rule 28-20, F.A.C., was adopted. The rule contained a Work Program that, when complete, would improve water quality and better protect habitats for threatened and endangered species, and resolve other challenges. Of particular concern was the declining water quality of the near shore environment due to a lack of central sewer facilities, the loss of habitat for state and federally listed endangered species, public safety in the event of hurricanes, and a deficit of affordable housing.<sup>25</sup>

Concerns about water quality resulted in legislative action. Chapter 2010-205, Laws of Florida, required that by December 2015 all sewage disposal in the Florida Keys must be upgraded to meet advanced wastewater treatment standards that reduce the amount of nitrogen, phosphorus, biological oxygen demand and total suspended solids.<sup>26</sup> As a result, when the construction of the central sewage system is concluded, approximately 23,000 septic tanks will be eliminated.<sup>27</sup> The bond financing in the Save our Everglades Program, approved by the Legislature in 2012, and the extension of the Monroe County Infrastructure Sales Tax will provide the foundation to complete the central sewer by 2015.

#### Nitrogen Reduction

In 2008 the Legislature directed the DOH to conduct a six-year study to develop passive strategies for nitrogen reduction for OSTDSs. Regardless of the source, excessive nitrogen has negative effects on public health and the environment. The project is in its fourth year and is within the original \$5.1 million budget. The final phase of the project is from 2013 to 2015. Project tasks will be to complete monitoring and other field activities, perform additional testing as deemed appropriate by the Legislature, and make final reporting recommendations on onsite sewage nitrogen reduction strategies for Florida's future.<sup>28</sup>

Current law requires OSTDSs to cease discharge by December 31, 2015, or comply with the DOH rules and provide the level of treatment that, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:<sup>29</sup>

- Biochemical Oxygen Demand of 10 mg/l;
- Suspended Solids of 10 mg/l;
- Total Nitrogen of 10 mg/l; and
- Total Phosphorus of 1 mg/l.

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<sup>25</sup> Florida Department of Economic Opportunity, *Florida Keys Area of Critical State Concern Annual Report*, p. 11, 2012, available at [www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf](http://www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf) (last visited Apr. 6, 2013).

<sup>26</sup> Section 381.0065(4)(l), F.S.

<sup>27</sup> See *supra* note 25.

<sup>28</sup> See DOH, *Status Report on Phase II and Phase III of the Florida Onsite Sewage Nitrogen Reduction Strategies Study*, Feb. 1, 2013, <http://www.myfloridaeh.com/ostds/research/Nitrogen.html> (last visited on Apr. 6, 2013).

<sup>29</sup> Section 381.0065(4)(l), F.S.

Tests performed by the nitrogen reduction study have produced results of reduction in total nitrogen of over 95 percent with a final effluent concentration of 2.6 mg/l or less for several of the systems.<sup>30</sup>

### III. Effect of Proposed Changes:

**Sections 1 and 3** amend ss. 125.022 and 166.033, F.S., respectively, to require counties and municipalities to attach a disclaimer to all development permits that includes a condition that all other applicable state or federal permits must be obtained before commencement of the development.

**Section 2** amends s. 125.35, F.S., to expand the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility;

**Section 4** amends several provisions in s. 381.0065(4), F.S., relating to onsite sewage treatment and disposal systems (OSTDSs) in Monroe County. The bill:

- Requires Monroe County property owners who are not scheduled to be served by a central sewer by December 31, 2015, to comply with certain concentration level standards;
- Provides that a tested and certified OSTDS that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards;
- Allows Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020; and
- Allows property owners who have paid connection fees or assessments for connection to a central sewer system, in an area scheduled to be served by a central sewer by December 31, 2015, the option of installing a holding tank with a high water alarm until they are able to connect to a central sewer system.

**Section 5** extends building permits and any permit issued pursuant to part IV of ch. 373, F.S., regarding management and storage of surface waters, which expire between January 1, 2012, and January 1, 2016, for a period of three years after the expiration date of the permit. This extension also applies to local government-issued permits and does not prohibit conversion from the construction phase to the operation phase of a permit. Also, the bill sets a maximum extension of seven total years for the listed extensions in combination with this extension. This three year extension applies only to areas that are to be served by central sewer systems by December 2015 within the Florida Keys Area of Critical State Concern in unincorporated Monroe County and excludes special wastewater districts.

**Section 6** amends subsection (3) of section 24 of chapter 2012-205, Laws of Florida, to provide that valid permit holders eligible for a two year extension have until October 1, 2013 to notify the authorizing agency of their intention to utilize the extension.

**Section 7** provides an effective date of July 1, 2013.

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<sup>30</sup> *Supra* note 28.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

**Single Subject Rule**

The title of the bill is an act relating to Development Permits, yet the bill contains provisions relating to local government leasing of real property and onsite sewage treatment and disposal systems. As such, the bill may be subject to challenge under Section 6, Article III of the Florida Constitution, which requires every law to “embrace but one subject and matter properly connected therewith.”

**Local Bills**

Article 3, section 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Because the building permit provisions in section 5 of the bill apply solely to the Florida Keys area, it is possible the bill may be considered a local bill and therefore be subject to special law requirements in the Constitution including the requirement of notice of intent to seek enactment.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.



**B. Private Sector Impact:****NFIP**

The bill ensures Florida is fully compliant with NFIP and will save communities from the threat of being suspended from the program for non-compliance with NFIP standards.

If a community were to be suspended for non-compliance with NFIP, lending institutions may require private flood insurance for high-risk properties at significantly higher cost to the homeowner. If a flood disaster occurs in a suspended community, many types of federal disaster assistance for the acquisition, construction, or repair of insurable structures within a SFHA normally available to individuals and households for housing and personal property will not be available.

**Permit Extensions**

The bill provides two permit extension provisions which may help developers who have previously expired or soon-to-be expired permits who would like to keep their projects eligible in the future.

**OSTDSs**

OSTDSs require a significant financial commitment to install and operate over the life of the system. Connecting to a central sewer system is also a significant investment. For residents in unincorporated Monroe County who have installed an OSTDS since July 1, 2010 and comply with the effluent standards provided in law, the bill provides assurance that they may continue to operate their OSTDS until December 31, 2020.

A property owner will also have the option of installing a holding tank with a high water alarm. Savings are indeterminate because pumping costs for a holding tank can be high, but it expands the options available to property owners.

**C. Government Sector Impact:**

The bill expands the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility. This provision may provide a county more flexibility in selecting a lessee of county property contiguous to an existing sports franchise facility.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS/CS by Rules on April 17, 2013:**

The committee substitute:

- Expands the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility;
- Amends several provisions relating to onsite sewage treatment and disposal systems in Monroe County; and
- Provides for the extension of building permits for property owners within the Florida Keys Area of Critical State Concern in an area is to be served by central sewer systems by December 2015. This applies only in unincorporated Monroe County and excludes special wastewater districts.

**CS by Community Affairs on April 9, 2013:**

The committee substitute deletes a provision regarding mapped flood hazard areas. Also, the CS extends the deadline for the holder of certain permits to notify the authorizing agency of automatic extension eligibility.

- B. **Amendments:**

None.