

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 Transportation

BILL: CS/CS/SB 1070

INTRODUCER: Transportation Committee and Senator Simpson

SUBJECT: Fuel Terminals

DATE: April 4, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Miranda</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1070 addresses the authority of local government to amend a comprehensive plan, land use designation or regulation, or zoning to render as nonconforming the occupation and use of land by an existing, authorized fuel terminal.

The bill provides legislative intent, defines “fuel” and “fuel terminal”, and prospectively limits the authority of local government to change its land use designations to render a permitted and allowed fuel terminal a nonconforming use. The authority of local governments to enforce applicable laws for safety and operation of a fuel terminal is not limited. The bill authorizes repairing or rebuilding a fuel terminal to its preexisting capacity if damaged or destroyed due to natural disaster or other catastrophe.

The designated land use for a permitted and allowed fuel terminal under any comprehensive plan, land use map, zoning district or land development regulation will not be changed to conflict with the fuel terminal’s authorized use.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),¹ also known as Florida's Growth Management Act, was adopted in 1985. The Act requires all counties and municipalities to adopt local comprehensive plans that guide future growth and development.² Comprehensive plans contain chapters or "elements" that address topics including future land use, housing, transportation, conservation, and capital improvements.³ The state land planning agency that administers these provisions is the Department of Economic Opportunity.⁴

Land Development Regulation

Within one year of the adoption of a local comprehensive plan, a county or municipality must promulgate land development regulations that implement the comprehensive plan.⁵ Land is divided into districts and certain uses and developments are assigned to those distinct districts through the process of "zoning."⁶ Typical zoning classifications include "residential," "commercial," and "industrial." These classifications can include finer distinctions within them. For example, a district designated for residential use may be restricted to apartment buildings while another may only permit single family housing.

A "permitted use" within a particular zoning district is a use that a landowner may put his land to as of right.⁷ A "conditional use" may only be utilized secondarily to a permitted use and a local government has some discretion as to its approval.⁸ A "special exception" is a departure from the general provisions of a zoning ordinance granted through the exercise of the local government's legislative authority.⁹ A "nonconforming use" is an existing use that would not be permitted by a newly enacted zoning ordinance but is nevertheless allowed to continue to avoid injustice or undue hardship that would result if immediate suppression of the use was required.

Fuel Terminals

The Internal Revenue Service (IRS) defines a "terminal" used for fuel as "a storage and distribution facility supplied by pipeline or vessel, and from which taxable fuel may be

¹ See ch. 163, part II, F.S.

² Section 163.3167, F.S.

³ Section 163.3177, F.S.

⁴ Section 163.3221, F.S.

⁵ Section 163.3202(1), F.S.

⁶ 7 Fla. Jur 2d Building, Zoning, and Land Controls s. 111 *Generally; "Zoning" and "Planning" Defined and Distinguished* (2014).

⁷ *BMS Enters. LLC v. City of Fort Lauderdale*, 929 So.2d 9, 10 (Fla. 4th DCA 2006).

⁸ *Id.*

⁹ 7 Fla. Jur 2d Building, Zoning, and Land Controls s. 242 *Special Exception or Permit Distinguished from Variance* (2014).

removed at a rack...¹⁰ According to the IRS, there are currently 42 active fuel terminals in Florida.¹¹ Tampa is home to 11 fuel terminals¹² and the Port of Tampa receives approximately 500 petroleum ships and unloads 2.4 billion gallons a year.¹³

III. Effect of Proposed Changes:

Section 1 creates s. 163.3206, F.S., to declare that after July 1, 2014 a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with a fuel terminal's classification as a permitted and allowable use. The bill states that it is the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel terminal infrastructure in Florida because fuel terminals are essential to the vitality of the state's economy and the health, safety, welfare, and quality of life of the state's residents and visitors.

The bill defines "fuel" to include any of the following:

- "Alternative fuel" is defined in s. 525.01, F.S., as:
 - Methanol, denatured ethanol, or other alcohols;
 - Mixtures of gasoline or other fuels with methanol, denatured ethanol, or other alcohols;
 - Hydrogen;
 - Coal-derived liquid fuels; and
 - Fuels, other than alcohol, derived from biological materials.
- "Aviation fuel" is defined in s. 206.9815, F.S., as fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.
- "Diesel fuel" is defined in s. 206.86, F.S., as all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.
- "Gas" is defined in s. 206.9925, F.S., as all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (2).
- "Oil" is defined in s. 206.9925, F.S., as crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.
- "Motor fuel" is defined in s. 206.01, F.S., as all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.

¹⁰ Internal Revenue Service, *Publication 510, Excise Taxes: Part One – Fuel Taxes and Fuel Tax Credits and Refunds*, available at <http://www.irs.gov/publications/p510/ch01.html> (last visited March 4, 2014).

¹¹ Internal Revenue Service, *Approved Terminals 2-28-14*, available at http://www.irs.gov/pub/irs-utl/tcn_db.pdf (last visited March 4, 2014).

¹² *Id.*

¹³ Jamal Thalji, *Port of Tampa will fuel region with new \$56 million petroleum terminal*, Tampa Bay Times, Oct. 30, 2013, available at <http://marketplace.tampabay.com/news/business/energy/port-of-tampa-unveils-new-55-million-petroleum-terminal/2149912> (last visited March 4, 2014).

- “Natural gas fuel” is defined in s. 206.9951, F.S., as any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.
- “Petroleum fuel” is defined in s. 525.01, F.S., as all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.
- “Petroleum product” is defined in s. 206.9925, F.S., as any refined liquid commodity made wholly or partially from oil or gas, or blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, or blends or mixtures of two or more liquid products or byproducts derived from oil or gas, and includes, but is not limited to, motor gasoline, gasohol, aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, motor oil and other lubricants, naphtha of less than 400°F for petroleum feed, special naphthas, road oil, still gas, unfinished oils, motor gas blending components, including petroleum-derived ethanol when used for such purpose, and aviation gas blending components.

The bill defines “fuel terminal” as “a storage and distribution facility for fuel, supplied by pipeline or marine vessel, which has the capacity to receive and store a bulk transfer of fuel, is equipped with a loading rack through which fuel is physically transferred into tanker trucks or rail cars, and which is registered with the Internal Revenue Service as a terminal.”

The bill prohibits a local government from amending its comprehensive plan, land use map, zoning districts, or land development regulations after July 1, 2014, in a manner that would conflict with a fuel terminal’s classification as a permitted and allowable use, including amendments that would make a terminal a nonconforming use, structure, or development.

The bill requires that local governments allow a fuel terminal damaged or destroyed by a natural disaster or other catastrophe to be repaired to its pre-existing capacity.

The bill specifies the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for fuel terminals, is not limited by the bill so long as it does not conflict with federal or state safety and security requirements for fuel terminals. This includes safety and building requirements, and local safety and building standards.

Section 2 provides an effective date of July 1, 2014.

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:

Existing fuel terminals will be a permitted and allowable land use under any comprehensive plan, land use map, zoning district or land development regulation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 163.3206 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/CS by Transportation on April 3, 2014;

Removes the ability for fuel terminals to expand within the parcel that the fuel terminal is currently located on. Removes provisions that would provide aesthetic

standards for the expanded portion of the fuel terminal. Provides that land use classifications of fuel terminal after July 1, 2014 may not be amended. Requires that a local government allow for the timely repair of a fuel terminal damages, in the event of a natural disaster or catastrophe, to its prior capacity. Provides that local authority may adopt, implement and modify federal and state requirements for fuel terminals, as long as the exercise of local authority does not conflict with federal or state safety and security requirements for fuel terminals.

CS by Community Affairs on March 11, 2014:

Removes the declaration that an existing fuel terminal may expand beyond its current bounds and be a permitted and allowable use in certain land use categories. Authorizes existing fuel terminals to expand *within* the physical boundaries of the parcel that the fuel terminal is currently located on, regardless of its current land use designation.

Removes the declaration that fuel terminals proposed after July 1, 2014, are a permitted and allowable use in all industrial or similar land use categories and zoning districts.

B. Amendments:

None.