

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 947 Fuel Terminals

**SPONSOR(S):** Local & Federal Affairs Committee; Transportation & Highway Safety Subcommittee, Ray

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 1 N, As CS	Davy	Miller
2) Local & Federal Affairs Committee	15 Y, 1 N, As CS	Miller	Rojas
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill creates s. 163.3206, F.S., addressing 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 government 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 bill does not have a fiscal impact on state or local governments. 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.

The bill provides the act shall take effect July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),<sup>1</sup> also known as Florida's Growth Management Act, was adopted in 1985. The Act requires counties and municipalities to adopt local government comprehensive plans guiding future growth and development.<sup>2</sup> Comprehensive plans contain chapters or "elements" addressing topics including future land use, housing, transportation, conservation, and capital improvements, among others.<sup>3</sup> The Act is administered by the state land planning agency, the Department of Economic Opportunity.<sup>4</sup>

##### Land Development Regulation

Within one year of adopting a local comprehensive plan, a county or municipality must promulgate land development regulations implementing the plan.<sup>5</sup> Land is divided into districts and certain uses and developments are assigned to those distinct districts through the process of "zoning."<sup>6</sup> Typical zoning classifications include "residential," "commercial," and "industrial." These classifications can include finer distinctions. 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 one authorized as a matter of right.<sup>7</sup> A "conditional use" may only be utilized secondarily to a permitted use and a local government has some discretion as to its approval.<sup>8</sup> 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.<sup>9</sup> A "nonconforming use" or structure is one in which the use or structure was legally permitted prior to a change in the law but the change no longer permits the re-establishment of such structure or use.<sup>10</sup>

##### 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 removed at a rack..."<sup>11</sup> According to the IRS, there are currently 42 active fuel terminals in Florida.<sup>12</sup> At least one fuel terminal facility is alleged to be a nonconforming use.<sup>13</sup>

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<sup>1</sup> See Ch. 163, part II, F.S.

<sup>2</sup> Section 163.3167, F.S.

<sup>3</sup> Section 163.3177, F.S.

<sup>4</sup> Section 163.3221, F.S.

<sup>5</sup> Section 163.3202(1), F.S.

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

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

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

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

<sup>10</sup> See, e.g., *JPM Inv. Group, Inc. v. Brevard County Bd. of County Commissioners*, 818 So. 2d 595 (Fla. 5th D.C.A. 2002), citing §62-1181, Brevard County Code.

<sup>11</sup> 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).

<sup>12</sup> Internal Revenue Service, *Approved Terminals 2-28-14*, available at [http://www.irs.gov/pub/irs-utl/tcn\\_db.pdf](http://www.irs.gov/pub/irs-utl/tcn_db.pdf) (last visited March 4, 2014).

<sup>13</sup> Information provided by the Florida League of Cities. Due to incomplete information it is unknown if there are more fuel terminal facilities that are nonconforming uses. The one fuel terminal known to be a nonconforming use is a facility in the City of Cape Canaveral.

Tampa is home to 11 fuel terminals<sup>14</sup> and the Port of Tampa receives approximately 500 petroleum ships and unloads 2.4 billion gallons a year.<sup>15</sup> Approximately 12.5 million gallons of fuel are delivered daily through Port Everglades to thirteen terminal and pipeline operators,<sup>16</sup> over half of which is gasoline.<sup>17</sup>

## Effect of Proposed Changes

### Legislative Intent

The bill creates s. 163.3206, F.S., and declares the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel terminal infrastructure in Florida. The bill states fuel terminals are essential to ensure efficient and reliable transportation and delivery of an adequate quantity of fuel throughout the state. Further, the ability to receive, store, and distribute fuel is essential to the state's economy and to the health, safety, welfare, and quality of life of residents and visitors.

### Definitions

"Fuel" is defined 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 casing head 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.
- "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, benzene, 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

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

<sup>15</sup> 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> (accessed March 4, 2014).

<sup>16</sup> At <http://www.porteverglades.net/cargo/petroleum/> (accessed 3/25/2014).

<sup>17</sup> At <http://www.porteverglades.net/cargo/petroleum/from-tanker-to-gas-tank/> (accessed 3/25/2014).

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.

“Fuel terminal” is defined as “a storage and distribution facility for fuel, supplied by pipeline or marine vessel,” with the capacity to receive and store bulk transfers of fuel, is equipped with a loading rack for the physical transfer of fuel into tanker trucks or rail cars, and is registered as a terminal with the Internal Revenue Service.

#### Limitation on Changes to Local Land Use Designations

Beginning on July 1, 2014, a local government may not amend its comprehensive plan or land use regulations to conflict with an existing fuel terminal’s classification as a permitted or allowable use, including amendments making a terminal a nonconforming use. If the fuel terminal is damaged or destroyed due to natural disaster “or other catastrophe,” the bill requires the applicable local governments to allow the timely repair or reconstruction of the terminal to its preexisting capacity.

The bill does not limit the authority of a local government to enforce federal and state requirements for fuel terminals, including safety and building standards. However, the exercise of such authority may not conflict with federal or state safety and security requirements.

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 163.3206, F.S., designating fuel terminals as critical infrastructure, providing definitions, and preventing local governments from changing certain land use designations to conflict with the classification of an existing fuel terminal as a permitted and allowed use. Local governments retain the authority to applicable federal and state requirements for fuel terminals. If damaged or destroyed due to a natural or other catastrophe, a fuel terminal may be restored to its preexisting capacity.

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

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Restricting changes in local land use designations pertaining to existing permitted and authorized fuel terminals to those which do not conflict with such use provides greater stability for the fuel terminal industry, meeting in part the legislative intent stated in section 1 of the bill.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 3, 2014, the Local & Federal Affairs Committee will consider a proposed committee substitute for CS/HB 947. This analysis is drafted to the proposed committee substitute.