

**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 Committee on Agriculture

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BILL: SB 1214

INTRODUCER: Senator Smith

SUBJECT: Community Yard Trash Safe Burn Program

DATE: January 29, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Becker	AG	<b>Pre-meeting</b>
2.	_____	_____	AGG	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 1214 makes a legislative finding that a program allowing homeowners' associations to obtain permits to burn yard trash can significantly reduce the risk of wildfires. It sets forth definitions and requirements that empower a homeowners' association to apply for and obtain a permit from the Florida Forest Service (FFS) of the Department of Agriculture and Consumer Services (DACS) to conduct communitywide burning of yard trash at approved sites in accordance with an approved plan. The bill gives a homeowners' association enforcement powers and it requires DACS to adopt rules to administer this program.

**II. Present Situation:**

Open burning of yard waste is currently allowed without permit per rules adopted by the Department of Environmental Protection (DEP). One criterion set forth in the rule is that the yard waste must be generated on residential premises of not more than two family units.<sup>1</sup> The FFS has the primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur.<sup>2</sup> By statute, the FFS may delegate to a county or municipality the authority to oversee open burning programs.<sup>3</sup> Some local governments regulate the burning of yard trash or even prohibit the burning of yard trash and provide a pickup service to meet national air quality regulations.<sup>4</sup> There are more than 14,000 homeowners' associations across the state based on a 2016 list published by the Department of Business and Professional Regulation.<sup>5</sup>

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<sup>1</sup> Fla. Admin. Code R. 62-256.700 (2008).

<sup>2</sup> Section 590.01, F.S.

<sup>3</sup> Section 590.125(6), F.S.

<sup>4</sup> Department of Agriculture and Consumer Services (DACS), *Senate Bill 1214 Analysis* (Jan. 26, 2016) (on file with the Senate Committee on Agriculture).

<sup>5</sup> *Ibid.*

### III. Effect of Proposed Changes:

**Section 1** creates the Community Yard Trash Safe Burn Program with the following provisions:

- It states that it is the Legislature’s intent to allow homeowners’ associations to establish locations for burning yard trash and it makes a legislative finding that having such locations can significantly reduce the risk of wildfires resulting from burning yard trash.
- It establishes the following definitions:
  - Community burn location – a location established and certified by the Florida Forest Service for the purpose of open burning of yard trash.
  - Community burn plan – a plan filed by a homeowners’ association that includes at a minimum a site map, qualifications of individuals managing or conducting burns, plans for managing risks of wildfires, provisions to enforce compliance by residents, and other information that may be required by the Florida Forest Service.
  - Community burns – burning of residential yard trash at the certified location and in accordance with the approved community burn plan.
  - Homeowners’ association – by reference to s. 720.301, F.S., it means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term “homeowners’ association” does not include a community development district or other similar special taxing district created pursuant to statute.
  - Service – the Florida Forest Service of the Department of Agriculture and Consumer Services.
  - Yard trash – by reference to s. 590.125(1)(m), F.S., it means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.
- It creates the program and sets forth requirements as follows:
  - The Community Yard Trash Safe Burn Program is created in the Florida Forest Service of the Department of Agriculture. DACS is directed to adopt by rule standards for community burn plans which at a minimum must include:
    - A communitywide ban on burning yard trash outside the certified location(s).
    - Reasonable setbacks.
    - Minimum qualifications for individuals in charge of burning.
    - Reasonable requirements for managing wildfire related risks.
    - Requirements for enforcing resident compliance with burn plans which may include fines, suspension of use rights, and other remedies implemented in compliance with chapter 720, F.S. (Homeowners’ Associations).
  - Homeowners’ associations may establish one or more community burn locations after doing the following:
    - Apply and be approved for a permit from the Florida Forest Service.
    - Have an approved plan on file with the Florida Forest Service.
    - Ensure that all burns comply with the approved community burn plan.

- Ensure that all burns comply with local, municipal, and county ordinances.
- The Florida Forest Service must issue a permit granting authorization to conduct community burns to a homeowners' association after it fulfills all of the conditions required.
- The homeowners' association is given authority to enforce the community burn plan by levying fines, suspending use rights, and enforcing other available remedies all in accordance with chapter 720, F.S. (Homeowners' Associations). If a homeowners' association has been found by final order to have failed to oversee compliance or enforce restrictions, the Florida Forest Service may suspend or revoke the burn permit until it deems the homeowners' association is willing and able to comply with the plan, in which circumstance the service may assess costs and attorney fees and may make payment thereof a condition for reinstatement.
- The department is required to adopt rules to administer this program by July 1, 2017.

**Section 2** provides that this bill takes effect on July 1, 2016.

#### **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:

It may be more convenient and cost effective for homeowners' associations to burn yard trash on their premises.

C. Government Sector Impact:

DACS cannot determine a fiscal impact as it is unknown how many of the 14,000 homeowners' associations in the state would apply for a community burn plan which would require FSS to spend time for inspection and approval.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Florida Administrative Code Rule 62-256.700 referred to herein is part of the State Implementation Plan (SIP) to meet national ambient air quality standards of the Federal Clean Air Act. This bill would require a revision in the aforementioned rule, which would have to be approved by the United States Environmental Protection Agency.

**VIII. Statutes Affected:**

This bill substantially amends section 590.126 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.