

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1199 Environmental Protection Act

**SPONSOR(S):** Ingoglia

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE                                       | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|-----------|---------|--|
| 1) Civil Justice Subcommittee                   | 14 Y, 1 N | Frost   | Luczynski                                |
| 2) Agriculture & Natural Resources Subcommittee |           |         |  |
| 3) Judiciary Committee                          |           |         |  |

### SUMMARY ANALYSIS

Florida authorizes a citizen to assert standing to stop activity that will affect his or her use or enjoyment of air, water, or natural resources. However, court rulings and legislation in the U.S. and worldwide have suggested specific legal rights of nature may exist authorizing a person to assert standing on behalf of natural resources.

While U.S. Supreme Court precedent clearly limits standing for environmental claims to only an action causing injury to a human, dissenting opinions suggesting otherwise have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment, often resulting in lengthy yet unsuccessful litigation.

HB 1199 amends the Florida Environmental Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person or political subdivision; or
- Granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit the:

- Ability of an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- Standing to maintain an action for injunctive relief as otherwise provided by the EPA for:
  - Department of Legal Affairs;
  - Any political subdivision of the state; or
  - A resident of the state.

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

The bill is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Florida's Environmental Protection Act (EPA) authorizes a political subdivision or municipality or citizen of the state to take legal action seeking to:<sup>1</sup>

- Compel a governmental agency or authority to enforce laws, rules and regulations protecting Florida's air, water, and other natural resources;
- Prevent any person or governmental agency or authority from violating any laws, rules, or regulations protecting Florida's air, water, and other natural resources.

In an administrative, licensing, or other legal proceeding to protect Florida's air, water, or other natural resources from pollution, impairment, or destruction, the government or a citizen of the state is authorized to intervene<sup>2</sup> as a party to the legal action. To intervene, the government or a citizen must file a verified pleading asserting that the particular activity, conduct, or product will impair, pollute, or otherwise injure the air, water, or other natural resources of the state.<sup>3</sup> A citizen may not institute, initiate, petition for, or request such a proceeding, unless he or she will suffer a sufficiently immediate injury which is of the type and nature intended to be protected by law. However, a citizen is not required to demonstrate that his or her injury is different than that which the general public is required to show. A citizen's substantial interest injury is sufficient if the proposed activity, conduct, or product will affect his or her use or enjoyment of air, water, or natural resources protected by law.<sup>4</sup>

The Florida Supreme Court has held that the EPA is not an impermissible intrusion by the legislature into the court's power over practice and procedure in state courts, but instead creates a new cause of action setting out substantive rights not previously possessed by enabling a Florida citizen to take legal action to protect the environment without a showing of "special injury" as previously required.<sup>5</sup>

#### Rights of Nature

While Florida authorizes a citizen to assert standing to enjoin activity that will affect his or her use or enjoyment of air, water, or natural resources, some court rulings and legislation in the U.S. and worldwide<sup>6</sup> have authorized specific legal rights of nature authorizing a person to assert standing on behalf of natural resources.<sup>7</sup>

The U.S. Supreme Court's ruling in *Sierra Club v. Morton* is the closest the U.S. federal government has come to granting personhood to natural resources. In *Sierra Club*, a conservation group took legal action to prevent the U.S. Forest Service from approving a ski development proposed by Walt Disney Productions near the Sequoia National Forest.<sup>8</sup> The Sierra Club (Club) argued that the ski development would adversely affect the forest, but did not allege any personal injury to any specific member of the Club.<sup>9</sup> The court held that because there was no injury in fact to any member of the Club, the Club had

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<sup>1</sup> S. 403.412(2), F.S.

<sup>2</sup> "Intervene" means to join an ongoing ss. 120.569 or 120.57, F.S., proceeding, and does not authorize a citizen to institute, initiate, petition for, or request a proceeding under ss. 120.569 or 120.57, F.S. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under the administrative procedures act. S. 403.412(5), F.S.

<sup>3</sup> S. 403.412(5), F.S.

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

<sup>5</sup> *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980).

<sup>6</sup> In 2008, Ecuador granted legal rights to all of nature, and in 2017, four rivers were granted legal rights: the Whanganui River in New Zealand, the Ganges and Yamuna rivers in India, and the Rio Atrato in Colombia. Dr. Julia Talbot-Jones, *Flowing from Fiction to Fact: The Challenges of Implementing Legal Rights for Rivers*, Global Water Forum, <https://globalwaterforum.org/2018/05/14/flowing-from-fiction-to-fact-the-challenges-of-implementing-legal-rights-for-rivers/> (last visited Jan. 30, 2020).

<sup>7</sup> Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court* (Feb 14, 2018) <file:///C:/Users/Frost.Lindsey/Downloads/resources-07-00013-v2.pdf> (last visited Jan. 30, 2020).

<sup>8</sup> *Sierra Club v. Morton*, 405 U.S. 727 (1972).

<sup>9</sup> *Id.* at 734.

no standing to sue on behalf of the forest.<sup>10</sup> The court determined that because the Club did not “have a direct stake in the outcome...authoriz[ing] judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process” would undermine the goal of the Administrative Procedure Act.<sup>11</sup> Despite the court’s ruling Justice Douglas’s dissenting opinion suggests that “contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”<sup>12</sup> In a separate dissent, Justice Blackmun expressed similar concern and urged the court to consider the dangers of limiting judicial review solely to human injuries.<sup>13</sup>

While the *Sierra Club* opinion clearly limits standing in environmental actions to action causing injury to a human, the dissenting opinions by Justice Douglas and Justice Blackmun have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment. For example, in September 2017, the environmental group Deep Green Resistance (“DGR”) relied on Justice Douglas’s dissent when petitioning the federal District Court of Colorado to recognize legal personhood for the Colorado River System.<sup>14</sup> Joined by citizens of Colorado and Utah, DGR asked the United States District Court in Denver to declare the Colorado River Ecosystem a “person” such that the river system’s interest could be represented in court.<sup>15</sup> DGR claimed that the Colorado River System has “the right to exist, flourish, regenerate, and naturally evolve,” and that current laws did not protect the natural environment on which persons depend for survival and livelihood.<sup>16</sup> Following lengthy litigation, DGR ultimately voluntarily dismissed its case after the Colorado attorney general set forth numerous reasons the court did not have jurisdiction and opined that whether rights of nature exist should be reserved to Congress by the Constitution.<sup>17</sup>

Similar attempts to assert the rights of nature have been taken on the local level. For example, in New Mexico in 2013, the Mora County Board of Commissioners passed an ordinance protecting the rights of human communities, nature, and natural water.<sup>18</sup> However, an energy exploration firm challenged the ordinance, and the U.S. District court struck down the ordinance, holding the ordinance violated the Supremacy Clause and was impermissibly overbroad, in violation of the First Amendment.<sup>19</sup> In 2013, Lafayette, Colorado voters also attempted to impose a similar measure targeting hydraulic fracturing oil extraction (“fracking”) and proposed “certain rights for city residents and ecosystems as part of the city charter such as clean water, air and freedom from certain chemicals and oil and gas industry byproducts.”<sup>20</sup> When challenged by the Colorado Oil and Gas Association, the Boulder District Court held that Lafayette did not have the authority to prohibit practices authorized and permitted by the state.<sup>21</sup> More recently, the Orange County, Florida Charter Review Commission approved a request to establish a committee to assess adding rights for the Wekiva River and Econlockhatchee River to the county charter.<sup>22</sup>

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<sup>10</sup> *Id.* at 735.

<sup>11</sup> *Id.* at 740.

<sup>12</sup> *Id.* at 741-42.

<sup>13</sup> *Id.* at 755-56.

<sup>14</sup> Complaint for Declaratory Relief, *Colorado River Ecosystem et al. v. State of Colorado*, No. 1:17-cv-02316-RPM (D. Colo. Sept. 25, 2017), at 12-13.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Motion to Dismiss, No. 1:17-cv-02316-NYW (D. Colo. Oct. 17, 2017).

<sup>18</sup> *Swepi, LP v. Mora Cty.*, 81 F. Supp. 3d 1075, 1090 (D.N.M. 2015).

<sup>19</sup> *Swepi*, 81 F. Supp. 3d at 1088

<sup>20</sup> *City of Lafayette “Community Rights Act” Fracking Ban Amendment, Question 300* (November 2013), BALLOTOPEDIA (Nov. 2013),

[https://ballotpedia.org/City\\_of\\_Lafayette\\_%22Community\\_Rights\\_Act%22\\_Fracking\\_Ban\\_Amendment,\\_Question\\_300\\_\(November\\_2013\)](https://ballotpedia.org/City_of_Lafayette_%22Community_Rights_Act%22_Fracking_Ban_Amendment,_Question_300_(November_2013)) (last visited Jan. 30, 2020).

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

<sup>22</sup> Orange County Comptroller, *2020-01-22 Rights of the Wekiva River and Econlockhatchee River Committee*, <https://www.occompt.com/meetings/meeting/2020-01-22-rights-of-the-wekiva-river-and-econlockhatchee-river-committee/> (last visited Jan. 30, 2020).

## Effect of Proposed Changes

HB 1199 amends the Florida Environmental Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person<sup>23</sup> or political subdivision;<sup>24</sup> or
- Granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit the:

- Ability of an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- Standing to maintain an action for injunctive relief as otherwise provided by the EPA for:
  - Department of Legal Affairs;
  - Any political subdivision of the state; or
  - A resident of the state.

The bill is effective upon becoming law.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 403.412, F.S., relating to the Environmental Protection Act.

**Section 2:** Provides the act shall take effect upon becoming a law.

## 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:

None.

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<sup>23</sup> Person means an: individual; child; firm; association; joint adventure; partnership; estate; trust; business trust; syndicates; fiduciary; corporation; and all other groups or combinations. S. 1.01(3), F.S.

<sup>24</sup> Political subdivision means a: county; city; town; village; special tax school district; special road and bridge district; bridge district; and all other districts in Florida. S. 1.01(8), F.S.

**D. FISCAL COMMENTS:**

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

None.

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Lines 20-23: The prohibition on granting a person or political subdivision any specific rights relating to nature may be more precisely stated by making it a separate sentence.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**