

**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 Community Affairs

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BILL: SB 670

INTRODUCER: Senators Gruters and Mayfield

SUBJECT: Smoking on Public Beaches and in Public Parks

DATE: November 13, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Yeatman	CA	<b>Pre-meeting</b>
2.	_____	_____	IT	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 670 amends the “Florida Clean Indoor Air Act” in part II of ch. 386, F.S., which regulates tobacco smoking in Florida, to allow counties to restrict smoking within the boundaries of any public beach or park owned by a county. Currently, the state preempts the regulation of smoking under s. 386.209, F.S., and does not provide counties the authority to regulate smoking. The bill also prohibits smoking within the boundaries of any state park. “Smoking” is defined in ch. 386, F.S., as “inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.”

The bill changes the title of the “Florida Clean Indoor Air Act” to the “Florida Clean Air Act” to account for the broader application of the act proposed in the bill.

**II. Present Situation:**

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.<sup>1</sup>

**Florida Constitution**

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is

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<sup>1</sup> Section 386.202, F.S.

occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement, and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

### **Florida’s Clean Indoor Air Act**

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment’s prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever not being used for certain commercial purposes;<sup>2</sup> stand-alone bars;<sup>3</sup> designated smoking rooms in hotels and other public lodging establishments;<sup>4</sup> and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.<sup>5</sup>

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department’s specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.<sup>6</sup> The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

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<sup>2</sup> Section 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

<sup>3</sup> Section 386.2045(4), F.S. *See also* definition of the term “stand-alone bar” in s. 386.203(11), F.S.

<sup>4</sup> Section 386.2045(3), F.S. *See also* definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

<sup>5</sup> Section 386.2045(2), F.S. *See also* definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

<sup>6</sup> The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

### **Smoking Prohibited Near School Property**

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

### **Enforcement**

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.<sup>7</sup>

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.<sup>8</sup>

### **Regulation of Smoking Preempted to State**

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.<sup>9</sup> The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,<sup>10</sup> authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

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<sup>7</sup> Section 386.212(3), F.S.

<sup>8</sup> Section 386.212(4), F.S.

<sup>9</sup> Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (November 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

<sup>10</sup> Chapter 2011-108, L.O.F.

## Public Beaches in Florida

Florida has 825 miles of sandy coastline, attracting over 18 million tourists each year.<sup>9</sup> A significant portion of Florida's beaches is publically-owned, including federally-owned areas managed by the National Park Service, parts of Florida's 175 state parks, and the many beaches owned and managed by local governments on the coast.<sup>10</sup> There is no specific definition of "public beach" in the Florida Statutes, and whether a beach is considered public or private depends on factors such as ownership and access.<sup>11</sup>

Florida law ensures the public's reasonable access to beaches.<sup>12</sup> The Florida Constitution states that the "title to lands under navigable waters, within the boundaries of the state ... including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people."<sup>13</sup> This section is commonly known as the "public trust doctrine."<sup>14</sup> The mean high-water line is the boundary between the publically-owned foreshore (alternately covered and uncovered by the tide) and the dry sand above the line, which may be privately owned.<sup>15</sup> Unless the dry sand is already owned for public use, the private beachfront property extends to the mean high-water line.

The courts have recognized the public's ability to acquire rights to the dry sand areas of privately owned sections of a beach. In 1974, the Florida Supreme Court established the "customary use doctrine" in Florida when it held: "[i]f the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use, as a matter of custom, should not be interfered with by the owner."<sup>16</sup> A state law passed in 2018

<sup>9</sup> Department of Environmental Protection, *Beaches*, <https://floridadep.gov/water/beaches> (last visited at Nov 13, 2019).

<sup>10</sup> National Park Service, Canaveral National Seashore, *Nature and Science*, <https://www.nps.gov/cana/learn/nature/index.htm> (last visited Nov. 13, 2019). Canaveral National Seashore's 24 miles of undeveloped beach is the longest such stretch on the east coast of Florida; National Park Service, Gulf Islands National Seashore, *Things To Do*, <https://www.nps.gov/guis/planyourvisit/things2do.htm> (last visited Nov. 13, 2019). Gulf Islands National Seashore stretches for 160 miles along the coasts of both Florida and Mississippi; DEP, *Beaches and Coasts at Florida State Parks*, <https://www.floridastateparks.org/learn/beaches-and-coasts-florida-state-parks> (last visited Nov. 13, 2019). Florida's state parks include 100 miles of beaches; DEP, *Map of Florida's Coastal Counties*, <https://floridadep.gov/fco/fcmp/documents/map-floridas-coastal-counties> (last visited Nov. 13, 2019); Office of Economic & Demographic Research, *Annual Assessment of Florida's Water Resources and Conservation Lands, 2018 Edition*, 9, 17 (2018), available at [http://edr.state.fl.us/content/natural-resources/LandandWaterAnnualAssessment\\_2018Edition.pdf](http://edr.state.fl.us/content/natural-resources/LandandWaterAnnualAssessment_2018Edition.pdf) (last visited Nov. 13, 2019). Beaches in coastal counties are important for tourism and Florida's "brand"; DEP, Florida Coastal Management Program, *Final Assessment and Strategies, FY 2016 – FY 2020*, 30 (2015) available at [https://floridadep.gov/sites/default/files/FCMP\\_FY2016-20\\_Assessment.pdf](https://floridadep.gov/sites/default/files/FCMP_FY2016-20_Assessment.pdf) (last visited Nov. 13, 2019). Based on shoreline access sites, there are approximately 439 miles of public saltwater beach in Florida.

<sup>11</sup> Section 161.021(1), F.S. "Public access" is defined as "the public's right to laterally traverse the sandy beaches of this state where such access exists on or after July 1, 1987, or where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided."

<sup>12</sup> Section 187.201(8)(a), F.S.

<sup>13</sup> FLA CONST. art. X, s. 11.

<sup>14</sup> University of Florida, Sea Grant Florida, *Beaches*, <https://www.flseagrant.org/wateraccess/beaches/> (last visited Nov. 13, 2019).

<sup>15</sup> Section 177.28, F.S.; Section 177.27(9), (14), F.S. The full definition of "foreshore" is "the strip of land between the mean high-water and mean low-water lines that is alternately covered and uncovered by the flow of the tide." "Mean high water" is defined as the average height of the high waters over a 19-year period.

<sup>16</sup> *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 78 (1974).

prohibits local or state government entities from adopting ordinances or rules allowing the public to access privately-owned beaches under the customary use doctrine unless such ordinance or rule is based on a judicial declaration affirming recreational customary use on such beach.<sup>17</sup> Subsequently, Governor Scott issued an Executive Order directing all agencies headed by an official serving at the pleasure of the Governor not to adopt any rule restricting public access to any Florida beach that has an established recreational customary use, unless necessary for public safety.<sup>18</sup>

### **Public Parks Owned by Counties**

In Florida, there are 67 separate county park systems.<sup>19</sup> For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.<sup>20</sup> Some activities these parks provide the public include nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.<sup>21</sup>

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, many of which are county-owned parks.<sup>22</sup>

### **Florida's State Parks**

Florida's award-winning state park system contains 175 state parks, including nearly 800,000 acres of state lands and 100 miles of sandy beaches.<sup>23</sup> Florida's state parks include all real property in the state of Florida under the jurisdiction of the Department of Environmental Protection's (DEP) Division of Recreation and Parks (division) or real property, which may come under the division's jurisdiction regardless of its designation.<sup>24</sup> There are numerous designations in Florida's state park system, and examples include state park, state preserve, historic site, archaeological site, botanical site, museum, and culture center.<sup>25</sup> The statutory law governing Florida's state parks is primarily contained in ch. 258, F.S., State Parks and Preserves.

Requirements and prohibitions under ch. 258, F.S., are enforced by DEP and the Fish and Wildlife Conservation Commission's Division of Law Enforcement.<sup>26</sup> The division's regulations

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<sup>17</sup> Section 163.035(2), F.S.

<sup>18</sup> Office of the Governor, *Executive Order Number 18-202*, 2 (2018), available at: [https://www.flgov.com/wp-content/uploads/orders/2018/EO\\_18-202.pdf](https://www.flgov.com/wp-content/uploads/orders/2018/EO_18-202.pdf) (last visited Nov. 13, 2019).

<sup>19</sup> Florida Division of Recreation and Parks, *Frequently Asked Questions*, available at: <http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf> (last visited Nov. 7, 2019)

<sup>20</sup> Orange County Government Florida, *Parks*, available at: <http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk> (last visited Nov. 13, 2019)

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

<sup>22</sup> Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory*, available at: <https://floridadep.gov/parks/florida-outdoor-recreation-inventory> (last visited Nov. 13, 2019)

<sup>23</sup> DEP, *Division of Recreation and Parks*, available at: <https://floridadep.gov/parks> (last visited Nov. 13, 2019).

<sup>24</sup> Fla. Admin. Code R. 62D-2.013(1).

<sup>25</sup> *Id.*

<sup>26</sup> Section 258.601, F.S.

contain a rule about fires which prohibits disposing of smoking materials within any park except in designated receptacles.<sup>27</sup>

### Laws in Other States

In 2009, Maine passed a law prohibiting “[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.”<sup>28</sup> In 2015, Hawaii passed a law prohibiting smoking within its state park system.<sup>29</sup> In 2018, New Jersey banned smoking at public parks and beaches.<sup>30</sup> New Jersey’s legislature found that “[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]”<sup>31</sup>

Alaska law prohibits individuals from smoking outdoors “within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present.”<sup>32</sup> Puerto Rico prohibits smoking in “public or private recreational installations.”<sup>33</sup> The definition of public or private recreational installations under Puerto Rico law includes parks.<sup>34</sup> Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.<sup>35</sup>

Oregon’s Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.<sup>36</sup>

<sup>27</sup> Fla. Admin. Code R. 62D-2.013(3); National Fire Protection Association, Public Education, *Smoking*, available at: <https://www.nfpa.org/Public-Education/By-topic/Top-causes-of-fire/Smoking> (last visited Nov. 13, 2019). The term “smoking materials” is commonly used to refer to cigarettes, pipes, and cigars.

<sup>28</sup> Me. Rev. Stat. tit. 22, §§ 1580-E(2) and 1541(6). Under Maine law, “‘Smoking’ includes carrying or having in one’s possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. ‘Smoking’ includes the use of an electronic smoking device.”

<sup>29</sup> Haw. Rev. Stat. Ann. § 184-4.5. “Smoking” is defined in the statute as “inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device.”

<sup>30</sup> 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), available at: [https://www.njleg.state.nj.us/2018/Bills/PL18/64\\_.PDF](https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF) (last visited Nov. 13, 2019). The law defines “smoking” as “the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.”

<sup>31</sup> N.J. Stat. Ann. § 26:3D-56(e).

<sup>32</sup> Alaska Stat. Ann. §§ 18.35.301(c)(1) and 18.35.399(12). Alaska law defines “smoking” as “using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.”

<sup>33</sup> 24 L.P.R.A. §§ 891 and 892. “Smoking” is defined as “the activity of inhaling and exhaling smoke from [tobacco] and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes, and smoking articles while lit and it shall also include the use of the so-called electronic cigarette.”

<sup>34</sup> 24 L.P.R.A. § 891.

<sup>35</sup> Okla. Stat. Ann. tit. 21, § 1247(B).

<sup>36</sup> Or. Admin. R. 736-010-0040(8)(j).

Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.<sup>37</sup>

### Health and Environmental Concerns

In 2018, an estimated 16 percent of the adults in Florida were tobacco smokers.<sup>38</sup> Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.<sup>39</sup> Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.<sup>40</sup> Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.<sup>41</sup> Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.<sup>42</sup>

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.<sup>43</sup> It is estimated that of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of

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<sup>37</sup> American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf> (last visited Nov. 13, 2019). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

<sup>38</sup> United Health Foundation, *America's Health Rankings, Annual Report*, available at: <https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Nov. 13, 2019).

<sup>39</sup> Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm) (last visited Nov. 13, 2019).

<sup>40</sup> *Id.*; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf> (last visited Nov. 13, 2019).

<sup>41</sup> U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 7 (2014); Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm) (last visited Nov. 13, 2019).

<sup>42</sup> Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), available at: <https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639> (last visited Nov. 13, 2019); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles*, 34 WM MITCHELL L. REV. 1621, 1622–1624 (2008), available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-symposium-repace.pdf> (last visited Nov. 13, 2019).

<sup>43</sup> NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?* available at: <https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html> (last visited Nov. 13, 2019); Bonanomi, Giuliano et al., *Cigarette Butt Decomposition and Associated Chemical Changes Assessed by 13C CPMAS NMR*, 10 PLOS ONE 1 e0117393, 2 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307979/pdf/pone.0117393.pdf> (last visited Nov. 13, 2019).

the cigarette butts are discarded as litter.<sup>44</sup> Furthermore, cigarette butts contain hazardous substances, and studies have shown these are potentially toxic to animals.<sup>45</sup>

Under Florida law, it is illegal to discard any tobacco product as litter.<sup>46</sup> Discarding a cigarette butt would constitute a noncriminal infraction, punishable by a penalty of \$100 in addition to any court-ordered litter pickup or other commensurate labor.<sup>47</sup> However, barriers such as resource constraints or lack of cooperation can lead to the inadequate enforcement of litter-related laws.<sup>48</sup>

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.<sup>49</sup> Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.<sup>50</sup> In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.<sup>51</sup> Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the United States Forest Service shows that a significant number of wildfires were started by “smoking” between 1992 and 2015.<sup>52</sup> The Florida Forest Service is reporting an increased risk of wildfires for areas of northwestern Florida in the aftermath of Hurricane Michael, due to factors such as increased fuel loadings and reduced access for fire mitigation equipment.<sup>53</sup>

### III. Effect of Proposed Changes:

**Section 1** changes the title of part II of ch. 386, F.S., from “INDOOR AIR: SMOKING AND VAPING” to “SMOKING AND VAPING.”

<sup>44</sup> World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) available at: <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1> (last visited Nov. 13, 2019); Thomas E. Novotny and Elli Slaughter, *Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Waste*, 1 CURR. ENVIRON. HEALTH REP. 3: 208–216, 208 (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4129234/> (last visited Nov. 13, 2019).

<sup>45</sup> Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362-368, 362–363, 367 (2015), available at: [http://web.cjcu.edu.tw/journal/2015\\_03\\_04\\_11\\_23\\_24.114.pdf](http://web.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf) (last visited Nov. 13, 2019); Stephanie L. Wright, *Bioaccumulation and Biological Effects of Cigarette Litter in Marine Worms*, 2015 SCI. REP. 5: 14119, 1 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4569891/> (last visited Nov. 13, 2019).

<sup>46</sup> Section 403.413(2)(d) and (f), (4), F.S.

<sup>47</sup> Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

<sup>48</sup> Keep America Beautiful, *Enforcement and Prosecution Guide 2018*, 13–19 (2018), available at: [https://www.kab.org/sites/default/files/Enforcement\\_and\\_Prosecution\\_Guide\\_Final.pdf](https://www.kab.org/sites/default/files/Enforcement_and_Prosecution_Guide_Final.pdf) (last visited Nov. 13, 2019).

<sup>49</sup> Section 633.142(2)(a), F.S.

<sup>50</sup> Section 633.142, F.S.

<sup>51</sup> Florida Department of Agriculture and Consumer Services, Wildland Fire, *Prevention*, available at: <https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Wildland-Fire> (last visited Nov. 13, 2019).

<sup>52</sup> Karen C. Short, *Spatial Wildfire Occurrence Data For the United States, 1992-2015* (2017), available at: <https://www.fs.usda.gov/rds/archive/Product/RDS-2013-0009.4/> (last visited Nov. 13, 2019). The data can be viewed by clicking on the file labeled “RDS-2013-0009.4\_ACCDB.zip,” and viewing the column labeled “STAT\_CAUSE\_DESCR.”

<sup>53</sup> Jim Karels, Director, Florida Forest Service, Presentation to the Florida Senate Environment and Natural Resources Committee, January 8, 2019, *Hurricane Michael Impacts, Actions and Needs*, slides 14-16, 18 (2019).



**Section 2** amends s. 386.201, F.S., to provide that the short title of part II of ch. 386, F.S. is renamed the “Florida Clean Air Act,” and removes the reference to “indoor” air in the current title.

**Section 3** amends s. 386.209, F.S., to provide counties the authority to further restrict smoking within the boundaries of any public beach or park they own. Given the existing definition of “smoking” in ch. 386, F.S., the bill allows counties to further restrict the ability for any person to inhale, exhale, burn, carry, or possess any lighted tobacco product, including cigarettes, cigars, pipe tobacco, or any other lighted tobacco product, at a public beach or park.

**Section 4** creates s. 386.2095, F.S., which prohibits smoking within the boundaries of a state park. This provision will be enforced by the DEP and the Fish and Wildlife Commission’s (FWC) Division of Law Enforcement. The DEP will establish rules and penalties in regards to the smoking prohibition.

**Section 5** amends s. 381.84, F.S., to account for the name change described in section 1 of the bill. The “Florida Clean Indoor Air Act” referenced in the tobacco education and use prevention program statute is renamed the “Florida Clean Air Act.”

**Section 6** amends s. 386.211, F.S., to account for the name change described in section 1 of the bill. The “Florida Clean Indoor Air Act” referenced in the public announcements in mass transportation terminals statute is renamed the “Florida Clean Air Act.”

**Section 7** states that the act will take effect on July 1, 2020.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Visitors to county-owned beaches and parks and state parks who violate smoking restrictions may be subject to the applicable fines or civil penalty for such violations.

**C. Government Sector Impact:**

County governments that opt to restrict smoking within the boundaries of public beaches and parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent smoking restrictions deter or encourage visitation of a county or state park, the government sector may experience fluctuation in revenues generated by a public beach or park admittance fee.

State parks may see an increase in the number of fines that are assessed for violations of the smoking prohibition. Such fines are paid to the FWC and deposited in the State Game Trust Fund, pursuant to s. 258.008(1), F.S. Thus, the bill may increase revenue for the FWC's State Game Trust Fund.

The DEP may incur costs to adopt rules to implement the prohibition of smoking in state parks. The DEP and the FWC's Division of Law Enforcement may incur additional costs to enforce the prohibition of smoking in state parks.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There is no definition for "public beach" or "public park" in chapter 386, F.S., so it may not be clear exactly which areas may be subject to the bill's optional prohibition on smoking.

Although this bill specifically deals with "smoking," counties are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

This bill only provides counties the authority to prohibit smoking in parks, whereas municipalities would not be allowed to enact similar smoking restrictions.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 386.201, 386.209, 381.84, and 386.211.

This bill creates sections 386.2095 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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