

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 53 Public Works

**SPONSOR(S):** State Affairs Committee; Public Integrity & Elections Committee; Government Operations Subcommittee; DiCeglie and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/HB 367, CS/CS/CS/SB 1076

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**FINAL HOUSE FLOOR ACTION:** 79 Y's

34 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 53 passed the House on April 23, 2021, as amended. The bill was amended in the Senate on April 27, 2021, and was returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 28, 2021.

Currently, for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, certain entities of the state may not use a local ordinance or regulation that provides certain preferences. "Public works project" means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

For any competitive solicitations for construction services, the bill removes the 50 percent or more, state-appropriated funding threshold that triggers the prohibition on certain local preferences and instead, provides that the prohibition applies if such solicitations will be paid for with any funding that is state-appropriated. The bill also revises the definition of "public works project" to remove the 50 percent or more, state-appropriated funding threshold for certain activities and replaces it with a cost threshold of over \$1,000,000 in value paid for with any state-appropriated funds. The bill prohibits the state or any political subdivision that contracts for a public works project from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of its headquarters or offices or the residences of its employees.

Wastewater and stormwater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of Florida's waterways.

Beginning with the annual assessment due January 1, 2022, the bill requires the Office of Economic & Demographic Research (EDR) to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure in its annual assessment of Florida's water resources and conservation lands. By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater or stormwater services to develop a needs analysis for its jurisdiction over the subsequent 20 years. The analyses must be compiled and submitted to EDR and EDR must evaluate the compiled documents for the purpose of developing a statewide analysis for inclusion in the annual assessment due January 1, 2023.

The bill may have an indeterminate fiscal impact on the state and local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-194, L.O.F., and will be come effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Public Works Projects

##### Present Situation

##### *Procurement of Construction Services*

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>1</sup>

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>2</sup> A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.<sup>3</sup>

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.<sup>4</sup>

For a competitive solicitation<sup>5</sup> for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor's maintaining an office or place of business within a particular local jurisdiction;
- The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.<sup>6</sup>

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<sup>1</sup> S. 255.29, F.S.

<sup>2</sup> See s. 255.0525, F.S.; see also ch. 60D-5.002 and 60D-5.0073, F.A.C.

<sup>3</sup> S. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>4</sup> For counties, municipalities, and political subdivisions, similar publishing provisions apply. See S. 255.0525(2), F.S.

<sup>5</sup> "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate. S. 255.248, F.S.

<sup>6</sup> S. 255.0991(2), F.S.

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a “living wage,”<sup>7</sup> while others have adopted ordinances requiring apprenticeship programs.<sup>8</sup>

#### *Preference to State Residents*

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications<sup>9</sup> to those of nonresidents.<sup>10</sup> If a construction contract is funded by local funds, the contract may, but is not required to, contain such a provision.<sup>11</sup> In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the state’s job bank system.<sup>12</sup>

A contract will not be let to any person who refuses to execute an agreement that gives preference to state residents.<sup>13</sup> However, contracts involving the expenditure of federal aid funds do not have to give preference to employing state residents if that conflicts with federal law.<sup>14</sup>

#### *Public Works Projects – Prohibited Governmental Actions*

In 2017,<sup>15</sup> the Florida Legislature created section 255.0992, F.S., relating to public works projects, and defined the following terms:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

The law provides that except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or

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<sup>7</sup> See, e.g., Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

<sup>8</sup> See Charlie Frago, *Tampa Seeks to Require Apprenticeships on Large City Projects*, Tampa Bay Times (December 4, 2020), available at <https://www.tampabay.com/news/tampa/2020/12/04/tampa-seeks-to-require-apprenticeships-on-large-city-projects/> (last visited March 26, 2021).

<sup>9</sup> S. 255.099(1)(a), F.S., defines “substantially equal qualifications” as the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

<sup>10</sup> S. 255.099(1), F.S.

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

<sup>12</sup> S. 255.099(1)(b), F.S.

<sup>13</sup> S. 255.099(2), F.S.

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

<sup>15</sup> Ch. 2017-113, L.O.F.

- Recruit, train, or hire employees from a designated, restricted, or single source.<sup>16</sup>

In addition, the law provides<sup>17</sup> that the state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law. However, this provision does not apply to vendors listed in sections 287.133<sup>18</sup> and 287.134, F.S.<sup>19</sup>

The law does not apply to contracts executed by the Department of Transportation (DOT) under chapter 337, F.S.<sup>20</sup>

During the bid process, it is common for local governments to place certain limitations, such as the requirement of a general contractor's license, on the bid documents.

### *Federal Labor and Wage Laws*

The National Labor Relations Act of 1935<sup>21</sup> and the Labor Management Relations Act of 1947<sup>22</sup> constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.<sup>23</sup> A state may set the rate higher than the federal minimum, but not lower.<sup>24</sup> The act also requires employers to pay time and a half to their employees for overtime hours worked,<sup>25</sup> and establishes standards for recordkeeping<sup>26</sup> and child labor.<sup>27</sup> Over 135 million workers are covered under the act;<sup>28</sup> most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.<sup>29</sup>

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<sup>16</sup> S. 255.0992(2)(a), F.S.

<sup>17</sup> S. 255.0992(2)(b), F.S.

<sup>18</sup> S. 287.133, F.S., prohibits a vendor that has been convicted of a public entity crime from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state, any of its departments or agencies, or any political subdivision.

<sup>19</sup> S. 287.134, F.S., prohibits an entity that has been found by a court to have committed discrimination based on race, gender, national origin, disability, or religion from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state or any department or agency of the state.

<sup>20</sup> S. 255.0992(3), F.S.

<sup>21</sup> 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

<sup>22</sup> 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

<sup>23</sup> 29 U.S.C. s. 206.

<sup>24</sup> 29 U.S.C. s. 218(a).

<sup>25</sup> 29 U.S.C. s. 207(a)(1).

<sup>26</sup> 29 U.S.C. s. 211.

<sup>27</sup> 29 U.S.C. s. 212.

<sup>28</sup> United States Department of Labor, *Wage and Hour Division: Resources for Workers*, available at <http://www.dol.gov/whd/workers.htm> (last visited March 26, 2021).

<sup>29</sup> 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, [www.dol.gov/whd/regs/compliance/whdfs14.pdf](http://www.dol.gov/whd/regs/compliance/whdfs14.pdf) (last visited March 26, 2021).

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.<sup>30</sup> The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”<sup>31</sup> The Executive Order hourly minimum wage in effect from January 1, 2021, through December 31, 2021, is \$10.95.<sup>32</sup>

The Davis-Bacon Act<sup>33</sup> applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.<sup>34</sup> Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.<sup>35</sup> The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.<sup>36</sup> Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon “related Acts.”<sup>37</sup> The “related Acts” include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.<sup>38</sup>

### *State Labor and Wage Regulations*

The State Constitution protects the right for workers to collectively bargain, including public sector employees.<sup>39</sup> It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.<sup>40</sup>

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”<sup>41</sup> Employers must pay

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<sup>30</sup> Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited March 26, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> 85 Fed. Reg. 53850 (August 31, 2020), available at <https://www.federalregister.gov/documents/2020/08/31/2020-19037/establishing-a-minimum-wage-for-contractors-notice-of-rate-change-in-effect-as-of-january-1-2021> (last visited March 26, 2021).

<sup>33</sup> Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

<sup>34</sup> United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, available at <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited March 26, 2021).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf> (last visited March 26, 2021). Examples of “related Acts” are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

<sup>38</sup> *Id.*

<sup>39</sup> Art. I, s. 6, FLA. CONST.

<sup>40</sup> See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

<sup>41</sup> Art. X, s. 24(a), FLA. CONST.

employees no less than the minimum wage for all hours worked in Florida.<sup>42</sup> The current state minimum wage is \$8.65 per hour,<sup>43</sup> which is higher than the federal rate.<sup>44</sup>

#### *Department of Transportation Construction Projects*

Chapter 337, F.S., governs contracting by DOT. Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.<sup>45</sup> Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.<sup>46</sup> The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.”<sup>47</sup>

#### Effect of Proposed Changes

For any competitive solicitations for construction services, the bill removes the 50 percent or more, state-appropriated funding threshold and the preference based prohibition and instead, imposes a prohibition regarding solicitations that will be paid for with any state-appropriated funding. These penalty prohibitions apply to a state college, county, municipality, school district, or other political subdivision of the state. The bill prohibits the use of a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based upon:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill also revises the definition of “public works project” to remove the 50 percent or more, state-appropriated funding threshold for certain activities and replaces it with a cost threshold of over \$1,000,000 in value paid for with any state-appropriated funds. Except as required by federal or state law, the bill prohibits the state or any political subdivision that contracts for a public works project from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of its headquarters or offices or the residences of the employees of such contractor, subcontractor, or material supplier or carrier. Additionally, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

Lastly, the bill provides that a state or political subdivision may not prohibit a contractor, subcontractor, or material supplier or carrier who is able, qualified, licensed, or certified to perform such work, from receiving information about public works opportunities.

The bill does not apply to contracts executed by the Department of Transportation under chapter 337, F.S., or to a use authorized by the Charter County and Regional Transportation System Surtax, which

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<sup>42</sup> Art. X, s. 24(c), FLA. CONST.

<sup>43</sup> Department of Economic Opportunity, *Display Posters and Required Notices*, [https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/poster-fl-minimum-wage-2021-english.pdf?sfvrsn=74a4bb0\\_2](https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/poster-fl-minimum-wage-2021-english.pdf?sfvrsn=74a4bb0_2) (last visited March 26, 2021).

<sup>44</sup> The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited March 26, 2021).

<sup>45</sup> S. 337.14(1), F.S.

<sup>46</sup> S. 337.14(2), F.S.

<sup>47</sup> S. 337.14(1), F.S.

is approved by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

## **Wastewater and Stormwater Management**

### Present Situation

#### *Wastewater*

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by the Department of Environmental Protection (DEP).<sup>48</sup> Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.<sup>49</sup> Each day, over 1.5 billion gallons of treated wastewater effluent<sup>50</sup> and reclaimed water<sup>51</sup> are disposed of from these facilities.<sup>52</sup> Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.<sup>53</sup>

#### *Stormwater*

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.<sup>54</sup> When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.<sup>55</sup> A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.<sup>56</sup> Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.<sup>57</sup>

#### *Office of Economic & Demographic Research*

The Office of Economic & Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations.<sup>58</sup> EDR publishes the official economic, demographic, revenue, and agency workload forecasts that are developed by consensus estimating conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.<sup>59</sup>

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<sup>48</sup> S. 403.087(1), F.S.

<sup>49</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

<sup>50</sup> R. 62-600.200(22), F.A.C., defines the term “effluent” as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

<sup>51</sup> R. 62-600.200(54), F.A.C., defines the term “reclaimed water” as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

<sup>52</sup> DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

<sup>53</sup> R. 62-600.440(4), F.A.C.

<sup>54</sup> DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, [https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant\\_Hanbook\\_I\\_-\\_Combined.pdf](https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf) (last visited Apr. 2, 2021).

<sup>55</sup> DEP, *Stormwater Management* (2016), 1, [https://floridadep.gov/sites/default/files/stormwater-management\\_0.pdf](https://floridadep.gov/sites/default/files/stormwater-management_0.pdf) (last visited Apr. 2, 2021).

<sup>56</sup> S. 373.403(10), F.S.

<sup>57</sup> DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, [https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant\\_Hanbook\\_I\\_-\\_Combined.pdf](https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf) (last visited Apr. 2, 2021).

<sup>58</sup> EDR, *Welcome*, <http://edr.state.fl.us/Content/> (last visited Apr. 2, 2021).

<sup>59</sup> EDR, *About Us*, <http://edr.state.fl.us/Content/about/index.cfm> (last visited Apr. 2, 2021).

In 2016, the Legislature passed Senate Bill 552, which directed EDR to conduct an annual assessment of Florida's water resources and conservation lands.<sup>60</sup> The assessment is conducted with the assistance of the water management districts, DEP, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, counties, municipalities, and special districts and must be submitted by January 1 of each year.<sup>61</sup>

### Effect of Proposed Changes

#### *Wastewater Management Analysis*

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater services<sup>62</sup> to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the facilities used to provide wastewater services.
- The number of current and projected connections and residents served calculated in five-year increments.
- The current and projected service area for wastewater services.
- The current and projected cost of providing wastewater services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.
- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its service area is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

The bill specifies that local governments in rural areas of opportunity are subject to the bill's requirements related to conducting analyses of wastewater systems, unless the requirements would create an undue economic hardship for the local government.

#### *Stormwater Management Analysis*

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing a stormwater management program or stormwater management system to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the stormwater management program or system and its facilities and projects.
- The number of current and projected residents served calculated in five-year increments.
- The current and projected service area for the stormwater management program or system.
- The current and projected cost of providing services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.

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<sup>60</sup> Chapter 2016-1, Laws of Fla.; s. 403.928, F.S.; EDR, *Natural Resources and Infrastructure*, <http://edr.state.fl.us/Content/natural-resources/index.cfm> (last visited Apr. 2, 2021).

<sup>61</sup> Ss. 403.928(5) and (7), F.S.

<sup>62</sup> The bill defines "wastewater services" to mean service to a sewerage system or service to domestic wastewater treatment works.



- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analyses, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its stormwater management program or stormwater management system is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the Secretary of DEP and the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

#### *EDR Annual Assessment*

Beginning with the annual assessment due January 1, 2022, the bill requires EDR to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure. As part of the analysis, the bill requires EDR to periodically survey public and private utilities.

The bill requires EDR to evaluate the compiled wastewater and stormwater analysis documents submitted by the counties for the purpose of developing a statewide analysis for inclusion in the assessment due January 1, 2023.

The bill specifies that local governments in rural areas of opportunity are subject to the bill's requirements related to conducting analyses of stormwater systems, unless the requirements would create an undue economic hardship for the local government.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

The bill does not appear to impact state revenues.

#### **2. Expenditures:**

The bill may have an indeterminate negative fiscal impact on EDR associated with the costs of analyzing water-related infrastructure expenditures and evaluating wastewater and stormwater management analyses; however, these costs can likely be absorbed within existing resources.

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

#### **1. Revenues:**

The bill does not appear to impact local government revenues.

#### **2. Expenditures:**

The bill may have an indeterminate negative fiscal impact on local governments associated with the costs of analyzing the needs of wastewater and stormwater management services.

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

The bill may have a positive indeterminate impact to the extent more contractors, subcontractors, or material suppliers or carriers would no longer be required to meet certain pre-bid requirements.

### **D. FISCAL COMMENTS:**

None.