

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1367 Unlawful Dumping

SPONSOR(S): Water Quality, Supply & Treatment Subcommittee, Local Administration, Federal Affairs & Special Districts Subcommittee, Altman, Bartleman and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Mwakyanjala	Darden
2) Water Quality, Supply & Treatment Subcommittee	16 Y, 0 N, As CS	Gawin	Curtin
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Litter Law prohibits a person, unless otherwise authorized by law or permit, from dumping litter in or on any:

- Public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor;
- Any freshwater lake, river, canal, or stream, or tidal or coastal water of the state, including canals; or
- Private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

The penalty for littering generally corresponds to the amount of litter discarded.

Landowners may provide warning to potential trespassers by posting a "no trespassing" notice upon "posted land." This notice may be given in the form of clearly noticeable signs or painted notice on trees placed not more than 500 feet apart along the boundary of the land. Unauthorized entry onto enclosed and posted land is *prima facie* evidence of the intention of such person to commit an act of trespass. In most cases, trespassing is penalized as a misdemeanor, but in certain cases is penalized as a felony.

The bill revises the Florida Litter Law to prohibit a person from dumping litter in or on water control district property or canal rights-of-way. If any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, may be found in violation. The bill provides that the draining or discharging of litter is dumping and adds personal property, pharmaceuticals, household items, and sheds to the list of items that are considered litter. The bill states that the definition of litter does not include permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater. The bill clarifies that the definition of motor vehicle or motor vehicle part includes trucks, trailers, and motor homes.

The bill requires a water control district's board of directors or the district manager who discover that unlawful dumping has occurred on district lands to report the incident to the appropriate law enforcement agency with jurisdiction over the district. The bill provides that a law enforcement officer may enter any district canal right-of-way, property, or facility to respond to such an incident.

The bill also revises the definition of "posted land" for the purpose of trespass to provide that a water control district may meet posting requirements by placing signs at or near the intersection of any district canal right-of-way and a road right-of-way.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Littering

The Florida Litter Law prohibits a person, unless otherwise authorized by law or permit, from dumping¹ litter² in or on any:

- Public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor;
- Freshwater lake, river, canal, or stream, or tidal or coastal water of the state, including canals; or
- Private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

The penalty for littering generally corresponds to the amount of litter discarded:³

Amount of Litter	Penalty
< 15 pounds or < 27 cubic feet	Noncriminal violation ⁴
> 15 pounds but < 500 pounds or > 27 cubic feet but < 100 cubic feet	First degree misdemeanor ⁵
> 500 pounds or > 100 cubic feet	Third degree felony ⁶

Trespass

Current law governing burglary and trespass specifies two options for providing “no trespassing” notice upon “posted land.” These options allow the owner to post no trespassing signs or stenciled orange paint marks on trees or posts.⁷ The law defines “posted land” as land upon which:

- Clearly noticeable signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words “no trespassing” and in addition thereto the name of the owner, lessee, or occupant of the land; or
- Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:

¹ “Dump” means to dump, throw, discard, place, deposit, or dispose of. S. 403.413(2)(f), F.S.

² “Litter” means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. S. 403.413(2)(f), F.S.

³ S. 403.413(6), F.S.

⁴ A “noncriminal violation” means any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. S. 775.08(3), F.S.

⁵ A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

⁶ A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁷ S. 810.011(5)(a), F.S.

⁸ *Id.*

- Painted in an international orange color and displaying the stenciled words “No Trespassing” in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;
- Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and
- Placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land.

Painted notices must be accompanied by signs that comply with the requirements for size and text for posted signs⁹ and placed conspicuously at all places where entry to the property is normally expected or known to occur.¹⁰

Notice by posting is not necessary on any enclosed land or place not exceeding five acres in area on which there is a dwelling house in order to obtain the protections pertaining to trespass on enclosed lands.¹¹

Unauthorized entry onto enclosed and posted land is *prima facie* evidence of the intention of such person to commit an act of trespass.¹² In most cases, trespassing is a penalized as a misdemeanor but in certain cases is penalized as a felony.¹³

Effect of Proposed Changes

The bill prohibits a person from dumping litter in or on any water control district property or canal right-of-way unless the district's board of directors or the district manager (or his or her designee) has given prior consent. The bill provides that if any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, may be found to be in violation.

The bill defines a “water control district” as a water control district that exists pursuant to ch. 298, F.S. or was otherwise created by special act. The bill also revises the following definitions in the Florida Litter Law:

- “Dump,” by adding draining and discharging; and
- “Litter,” by adding personal property, pharmaceuticals, household items, and sheds and clarifying that the definition of motor vehicle or motor vehicle part includes trucks, trailers, and motor homes. The definition excludes permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater.

The bill requires a water control district's board of directors or the district manager who discover that unlawful dumping has occurred on district lands to report the incident to the appropriate law enforcement agency with jurisdiction over the district. The bill provides that a law enforcement officer may enter any district canal right-of-way, property, or facility to respond to such an incident.

The bill also revises the definition of “posted land” for the purpose of trespass to provide that a water control district that exists pursuant to ch. 298, F.S., or was otherwise created by special act may meet posting requirements by placing signs at or near the intersection of any district canal right-of-way and a road right-of-way.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.413, F.S., relating to Florida Litter Law.

Section 2: Amends s. 810.011, F.S., relating to definitions for burglary and trespass.

Section 3: Reenacts s. 403.4135, F.S., relating to litter receptacles.

⁹ S. 810.011(5)(a)2.b., F.S.

¹⁰ *Id.*

¹¹ S. 810.011(5)(b), F.S.

¹² S. 810.12(1), F.S.

¹³ Ss. 810.08-810.09, F.S.

STORAGE NAME: h1367c.WST

DATE: 3/29/2023

Section 4: Reenacts s. 810.12, F.S., relating to unauthorized entry on land.

Section 5: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate prison bed impact by creating a new felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate jail bed impact by creating new misdemeanor offenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revises the definition of litter to exclude permitted stormwater, drainage, pumping, or runoff.

The analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs, & Special Districts Subcommittee.

On March 29, 2023, the Water Quality, Supply & Treatment Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified the definition of litter does not include regulated or authorized drainage, pumping, or runoff of surface water or stormwater.

This analysis is drafted to the committee substitute as approved by the Water Quality, Supply & Treatment Subcommittee.