

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.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1576

INTRODUCER: Senator Rodriguez

SUBJECT: Prohibition of Smoking and Vaping in State Parks

DATE: January 16, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Pre-meeting
2.			AEG	
3.			FP	

I. Summary:

SB 1576 prohibits smoking and vaping in state parks.

Under the bill, the Department of Health is required to conspicuously post at each entrance of each state park signs stating that smoking and vaping are prohibited within the boundaries of the state park.

Violating this prohibition would be a noncriminal violation punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation.

II. Present Situation:

Florida Constitution

Tobacco Smoking and Vaping

Article X, section 20 of the Florida Constitution is a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke and vapor. It which prohibits tobacco smoking and the use of vapor-generating electronic devices in enclosed indoor workplaces. The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.”¹ The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

The Florida Constitution contains several relevant definitions including:

- Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

¹ FLA. CONST. art. X, s. 20.

- Vapor-generating electronic device means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.

Florida's Clean Indoor Air Act

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and 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 Article X, section 20 of the State Constitution.²

Section 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The exceptions include private residences whenever not being used for certain commercial purposes;³ stand-alone bars;⁴ designated smoking rooms in hotels and other public lodging establishments;⁵ retail vape shops; and retail tobacco shops.⁶

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 DOH and 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.⁷ 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.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking or vaping by any person under 21 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 ch. 386, F.S., and prescribes the information that must be included in the citation.

² Section 386.202, F.S.

³ Section 386.2045(1), F.S. See also definition of the term "private residence" in s. 386.203(1), F.S.

⁴ Section 386.2045(4), F.S. See also definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁵ Section 386.2045(3), F.S. See also definition of the term "designated guest smoking room" in s. 386.203(4), F.S.

⁶ Section 386.2045(2), F.S. See also definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

⁷ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

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.⁸ 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.⁹

Regulation of Smoking Preempted to State

Section 386.209, F.S., expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject. However, counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars. A municipality may further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars. School districts may further restrict smoking by persons on school district property. County or municipal ordinances may impose more restrictive regulations on the use of vapor-generating devices.¹⁰

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.¹¹ 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.,¹² 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.

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.¹³ 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).¹⁴ 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.¹⁵ The statutory law governing Florida’s state parks is primarily contained in ch. 258, F.S., State Parks and Preserves.

⁸ Section 386.212(3), F.S.

⁹ Section 386.212(4), F.S.

¹⁰ Section 386.209, F.S.

¹¹ Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

¹² Chapter 2011-108, L.O.F.

¹³ DEP, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited Jan. 10, 2024).

¹⁴ Fla. Admin. Code R. 62D-2.013(1).

¹⁵ *Id.*

Requirements and prohibitions under ch. 258, F.S., are enforced by DEP and the Fish and Wildlife Conservation Commission's Division of Law Enforcement.¹⁶ DEP's park rules prohibit disposing of smoking materials within any park except in designated receptacles.¹⁷

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.”¹⁸ In 2015, Hawaii passed a law prohibiting smoking within its state park system.¹⁹ New Jersey banned smoking at public parks and beaches.²⁰ 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[.]”²¹

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.”²² 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.²³

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.²⁴ Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.²⁵

¹⁶ Section 258.601, F.S.

¹⁷ Fla. Admin. Code R. 62D-2.013(3).

¹⁸ Me. Rev. Stat. tit. 22, ss. 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.”

¹⁹ 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.”

²⁰ NJ ST 26:3D-58; The law defines “smoking” as burning, inhaling, or exhaling smoke from, or possessing a lighted cigar, cigarette, pipe, or any other substance that contains tobacco or another matter that can be smoked. It also means inhaling or exhaling smoke or vapor from an electronic smoking device.

²¹ N.J. Stat. Ann. § 26:3D-56(e).

²² Alaska Stat. Ann. ss. 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.”

²³ Okla. Stat. Ann. tit. 21, § 1247(B).

²⁴ Or. Admin. R. 736-010-0040(8)(j).

²⁵ American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf> (last visited Jan. 11, 2024). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

Health and Environmental Concerns

An estimated 11.3 percent of the adults in Florida are tobacco smokers.²⁶ Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.²⁷ Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.²⁸ Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.²⁹ Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.³⁰

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.³¹ It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.³²

Under Florida law, it is illegal to discard any tobacco product as litter.³³ Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of \$150 in addition to any court-ordered litter pickup or other commensurate labor.³⁴

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.³⁵ Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.³⁶ In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.³⁷

²⁶ United Health Foundation, *America's Health Rankings, Annual Report*, <https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Jan. 11, 2024).

²⁷ *Id.*; National Cancer Institute, *Harms of Cigarette Smoking and Health Benefits of Quitting* available at <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet> (last visited Jan. 11, 2024).

²⁸ Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 11, 2024).

²⁹ *Id.*

³⁰ 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 Jan. 11, 2024); Ario Ruprecht, et. al, *Outdoor second-hand cigarette smoke significantly affects air quality*, *European Respiratory Journal*, 48 (3) 918-920, (Sept. 2016) available at <https://erj.ersjournals.com/content/48/3/918> (last visited Jan. 11, 2024).

³¹ NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?*, <https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html> (last visited Jan. 11, 2024).

³² 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 Jan. 11, 2024).

³³ Section 403.413(2)(d) and (f), (4), F.S.

³⁴ 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.

³⁵ Section 633.142(2)(a), F.S.

³⁶ Section 633.142, F.S.

³⁷ Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention*, <https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire> (last visited Jan. 11, 2024).

Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the U.S. Forest Service shows that a significant number of wildfires were started by “smoking” between 1992 and 2018.³⁸

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 386.2095, F.S., to prohibit smoking and vaping in state parks.

The Department of Health must conspicuously post at each entrance of each state park signs stating that smoking and vaping are prohibited within the boundaries of the state park. The signs must be clearly legible in a font size of at least 1 inch in height and include the words “SMOKING OR VAPING WITHIN STATE PARK BOUNDARIES IS PROHIBITED BY LAW.”

Section 2 amends s. 386.208, F.S., to make it a noncriminal violation punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation.

Section 3 provides an effective date of July 1, 2024.

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.

³⁸ Karen C. Short, *Spatial wildfire occurrence data for the United States, 1992-2018*, (2021), available at <https://www.fs.usda.gov/rds/archive/Catalog/RDS-2013-0009.5> (last visited Jan. 11, 2024). The data can be viewed by clicking on the file labeled “RDS-2018-0009.5_ACCDB.zip,” and viewing the column labeled “STAT_CAUSE_DESCR.”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the section 386.208 of the Florida Statutes.

This bill creates section 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.