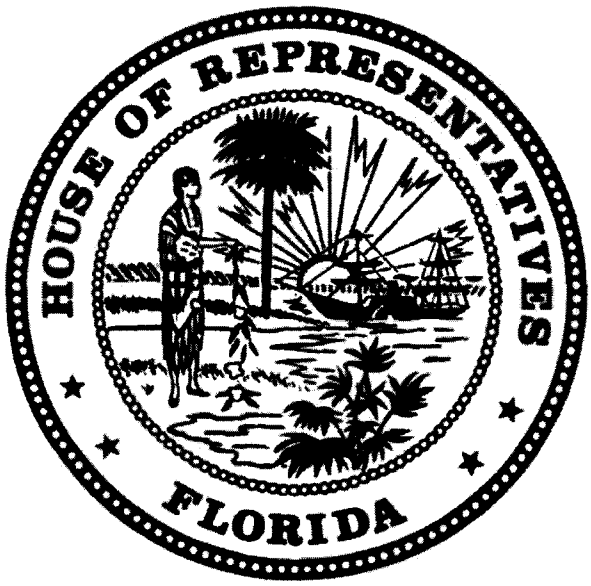

State Affairs Committee

Thursday, February 25, 2016
1:00 PM
Morris Hall (17 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Thursday, February 25, 2016 01:00 pm
End Date and Time:	Thursday, February 25, 2016 04:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/CS/HB 371 Florida Council on Poverty by Appropriations Committee, Government Operations Subcommittee, Williams, A., Albritton
CS/CS/HB 447 Local Government Environmental Financing by Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Raschein
CS/CS/HB 533 Arthur G. Dozier School for Boys by Appropriations Committee, Government Operations Subcommittee, Narain
HB 773 Special Assessments on Agricultural Lands by Albritton
CS/HB 789 Local Government Finance by Finance & Tax Committee, Pilon, Rogers
HB 795 Dredge and Fill Activities by Edwards
CS/HB 953 Legislative Reauthorization of Agency Rulemaking Authority by Rulemaking Oversight & Repeal Subcommittee, Eisnaugle
CS/HB 1051 Recreational Boating Zones by Agriculture & Natural Resources Subcommittee, Caldwell
CS/CS/HB 1095 Prevention of Acts of War by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Ray
CS/CS/HB 1195 Technology by Government Operations Appropriations Subcommittee, Government Operations Subcommittee, Grant
HB 4049 Scrutinized Companies by Combee
PCS for CS/HB 1037 -- Public Records/State Agency Information Technology Security Programs

NOTICE FINALIZED on 02/23/2016 3:50PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 371 Florida Council on Poverty
SPONSOR(S): Appropriations Committee; Government Operations Subcommittee; Williams; Albritton and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Toliver	Williamson
2) Appropriations Committee	24 Y, 0 N, As CS	Proctor	Leznoff
3) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

The bill establishes the Florida Council on Poverty as an advisory council and assigns it to the Department of Economic Opportunity (DEO). The council consists of five members who must be Florida residents. Members serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The bill requires the council to hold its initial meeting no later than August 1, 2016. Thereafter, it must meet at least twice a year. Council meetings may be held via teleconference or other electronic means.

The bill requires the council to annually elect a chair and vice chair and establishes quorum requirements.

The bill requires the council to:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in the state;
- Develop recommendations to reduce the percentage of people living in poverty in the state; and
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes.

By January 15 of each year, the council must submit an annual report to the Governor and the Legislature, with the first report due in 2018. The report must contain an accounting of the council's activities as well as any recommendations the council has for legislative, administrative, or regulatory reforms for the purpose of mitigating the existence of poverty in Florida.

The bill provides that the council will be abolished on July 1, 2019.

The bill may have an insignificant negative fiscal impact on DEO, which can be absorbed within its existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The United States Census Bureau (bureau) tracks the rate of poverty throughout the population of the United States.[1] The bureau estimates that in 2013 there were 48.8 million Americans living in poverty, which equates to 15.8 percent of the country's population.[2] Florida's poverty rate of 17 percent exceeds the national average.[3] As of 2013, there were approximately 3.25 million persons living below the poverty line in Florida,[4] and of Florida's 67 counties, 47 had poverty rates exceeding the national average.[5]

In order to reduce the number of persons in poverty, some states have created statewide anti-poverty initiatives. The following are examples of such initiatives:

- The Legislative Commission to End Poverty in Minnesota by 2020 was created in 2006 to develop guidelines to end poverty and prepare recommendations on how to do so.[6]
- The Speaker of the House of Representatives for Alabama created a poverty task force in September 2007 to identify and assess conditions that create or worsen poverty throughout Alabama and to develop and propose policy initiatives to reduce or eliminate those conditions.[7]
- The Illinois Commission on the Elimination of Poverty was established in 2008 to address poverty in Illinois consistent with international human rights standards, with an initial goal to reduce extreme poverty in Illinois by 50 percent or more by 2015.[8]
- The Child Poverty Prevention Council for Louisiana was created in 2008 to pursue programs to reduce child poverty in the state by 50 percent over the following decade.[9]
- The Connecticut Legislature created a Child Poverty Council in 2004 to develop a 10-year plan to reduce the number of children living in poverty in Connecticut by 50 percent.[10]
- The Rhode Island Legislature created a legislative commission on family income and asset building in 2007 to conduct a comprehensive review of Rhode Island laws, policies, and activities that benefit those in poverty.[11]

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[1] The United States Bureau of the Census determines the poverty status of an individual or group of individual by comparing annual income to a set of dollar values called poverty thresholds that vary by family size, number of children, and the age of the householder. Poverty: 2012 and 2013, American Community Survey Briefs, U.S. Census Bureau, available at https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-01.pdf (last visited Jan. 10, 2016).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] The following counties have poverty rates exceeding the national average: Wakulla, Manatee, Lee, Volusia, Hillsborough, Monroe, Duval, Citrus, Escambia, Bay, Orange, Baker, Columbia, St. Lucie, Polk, Walton, Jefferson, Marion, Highlands, Osceola, Miami-Dade, Leon, Bradford, Gilchrist, Gulf, Washington, Levy, Calhoun, Union, Taylor, Glades, Suwannee, Hendry, Lafayette, Gadsden, Alachua, Okeechobee, Franklin, Jackson, Putnam, Dixie, Holmes, Liberty, Hardee, Madison, Hamilton, DeSoto. *See* United States Department of Agriculture, Economic Research Service, County-level Poverty Data Sets, available at http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx (last visited Jan. 24, 2016).
[6] Minnesota Laws 2006, ch. 282, part. 2, s. 27.
[7] Alabama House of Representatives, Poverty Task Force, Final Report (2008) available at http://www.clasp.org/documents/PTF-Final-Report.pdf (last visited Jan. 5, 2016).
[8] 20 ILL. COMP. STAT. 4080/10 (2008).
[9] LA, REV. STAT. ANN. s. 46:2801 (2008).
[10] CONN. GEN. STAT. s. 4-67x (2004).
[11] 2007 RI H 6561 (2007).

Advisory Bodies

Section 20.052, F.S., provides that an advisory body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements.

An advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose,[12] and it must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of the public purpose.[13] An advisory body may not be created unless:

- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members are appointed for 4-year staggered terms; and
- Its members serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses.[14]

The Governor, the head of the department, the executive director of the department, or a Cabinet officer, must appoint private citizen members of an advisory body that is adjunct to an executive agency.[15]

Effect of the Bill

The bill establishes the Florida Council on Poverty as an advisory council as defined in s. 20.03, F.S.[16] It is assigned to the Department of Economic Opportunity (DEO), where it is administratively housed.

The council consists of five members who must be Florida residents. Members of the council are appointed as follows:

- The Governor appoints one member, who must be from the Florida Association of Community Action, Inc.;
- The Chief Financial Officer appoints one member;
- The Commissioner of Agriculture appoints one member;
- The President of the Senate appoints one member; and
- The Speaker of the House of Representatives appoints one member.

Council members serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The bill requires members of the council to annually elect a chair and a vice chair.

The bill requires the initial meeting of the council to be held no later than August 1, 2016. Thereafter, it must meet at least twice each year at the call of the chair or at such times as may be prescribed by the council. Meetings may be held via teleconference or other electronic means. Three members of the council constitute a quorum, and the affirmative vote of a majority of the members of the council present is necessary to take official action.

The bill requires the council to:

- Conduct a review of policies and programs that work to move people out of poverty;
- Develop strategies to address the causes of poverty in the state;

[12] Section 20.052(1), F.S.
[13] Section 20.052(2), F.S.
[14] Section 20.052(4), F.S.
[15] Section 20.052(5)(a), F.S.
[16] Section 20.03(7), F.S., defines the term "council" or "advisory council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

- Develop recommendations to reduce the percentage of people living in poverty in the state; and
- Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes.

By January 15 of each year, the council must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that provides an accounting of its activities and recommendations for legislative, administrative, and regulatory reforms to facilitate efforts in mitigating the existence of poverty in Florida. The first report is due in 2018.

The bill provides for the abolishment of the Florida Council on Poverty on July 1, 2019.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law establishing the Florida Council on Poverty.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill authorizes members of the council to receive per diem and travel expenses in accordance with s. 112.061, F.S. DEO advised that the costs to implement this bill can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Government Operations Subcommittee adopted a strike-all amendment. The strike-all amendment:

- Renamed the Florida Commission on Poverty as the Florida Council on Poverty.
- Clarified that the council is administratively housed within DEO.
- Revised the membership of the council by increasing the number of gubernatorial appointees from one to two, and removed the authorization for the Governor to appoint any number of nonvoting members.
- Removed the requirement that council members be confirmed by the Senate.
- Provided for staggered terms of the appointed council members.
- Required the council to have its initial meeting no later than August 15, 2016.
- Removed the application process for counties to participate in the council's work.
- Clarified the council's scope of activities.
- Removed the authority for the council to procure information, contract for goods and services, and apply for and accept certain funds.
- Required the council to submit its first report on January 15, 2018.

On February 16, 2016, the Appropriations Committee adopted a strike-all amendment to provide for the abolishment of the Florida Council on Poverty on July 1, 2019, and provides the Commissioner of Agriculture a council member appointment while adjusting the Governor's appointment from two to one council member.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as approved by the Appropriations Committee.

A bill to be entitled

An act relating to the Florida Council on Poverty; establishing the council within the Department of Economic Opportunity; specifying the membership of the council; providing for organization of the council; authorizing reimbursement for per diem and travel expenses; prescribing the scope of the council's activities; requiring the council to annually submit a report to the Governor and Legislature; requiring the council's abolition by a specific date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Florida Council on Poverty.—

(1) ESTABLISHMENT OF THE COUNCIL.—The Florida Council on Poverty is established and assigned to the Department of Economic Opportunity as an advisory council, as defined in s. 20.03, Florida Statutes. The council shall be administratively housed within the Department of Economic Opportunity.

(2) COUNCIL MEMBERSHIP.—The council shall consist of five members who shall be residents of this state. The members shall be appointed as follows:

(a) The Governor shall appoint one member who must be from the Florida Association for Community Action, Inc.

(b) The Chief Financial Officer shall appoint one member.

CODING: Words stricken are deletions; words underlined are additions.

(c) The Commissioner of Agriculture shall appoint one member.

(d) The President of the Senate shall appoint one member.

(e) The Speaker of the House of Representatives shall appoint one member.

(3) MEETINGS; ORGANIZATION.—

(a) The first meeting of the council shall be held no later than August 1, 2016. Thereafter, the council shall meet at least twice each year. Meetings may be held via teleconference or other electronic means.

(b) Members of the council shall annually elect from its membership a chair and vice chair. The council shall meet at the call of the chair or at such times as may be prescribed by the council.

(c) Three members of the council constitute a quorum, and a meeting may not be held unless a quorum is present. The affirmative vote of a majority of the members of the council present is necessary for any official action by the council.

(d) Members of the council shall serve without compensation but may be reimbursed for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(4) SCOPE OF ACTIVITIES.—The council shall:

(a) Conduct a review of policies and programs that work to move people out of poverty.

(b) Develop strategies to address the causes of poverty in the state.

(c) Develop recommendations to reduce the percentage of people living in poverty in the state.

(d) Study the academic outcomes for children in poverty and develop recommendations on how to improve such outcomes.

(5) REPORT.—By January 15 of each year, beginning in 2018, the council shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing an accounting of its activities and recommendations for legislative, administrative, and regulatory reforms to facilitate efforts in mitigating the existence of poverty in this state.

(6) TERMINATION.—The Florida Council on Poverty shall be abolished on July 1, 2019.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 447 Local Government Environmental Financing
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	Helpling	Massengale
3) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

The bill revises various policies relating to local government environmental financing, including, but not limited to:

- Requiring the Department of Environmental Protection (DEP) to annually consider the recommendations of the Department of Economic Opportunity (DEO) relating to purchases of land within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, and to make recommendations to the Board of Trustees of the Internal Improvement Trust Fund (Board) with respect to the purchase of fee or any lesser interest in specified types of lands;
- Allowing local governments and special districts within an area of critical state concern to make recommendations to the Board for additional land purchases that were not included in DEO's recommendations;
- Authorizing a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, and to contribute funds to DEP for the purchase of lands by DEP. The acquisition or contribution must not be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times;
- Modifying legislative intent provisions to specify that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities;
- Providing additional principles for guiding development within the Florida Keys Area of Critical State Concern;
- Expanding the purposes for which the local government infrastructure surtax can be used to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern;
- Extending the timeframe in which Everglades restoration bonds may be issued and increasing the maturation date of Everglades restoration bonds;
- Expanding the uses for Everglades restoration bonds to include projects that protect, restore or enhance nearshore water quality and fisheries, and protect water resources available to the Florida Keys;
- Providing a procedure to dispose of certain lands purchased with Everglades restoration bond proceeds; and
- Providing a 10-year appropriation of at least $5 million annually through the Florida Forever Act for land acquisition within the Florida Keys Area of Critical State Concern.

The bill has no fiscal impact on the state, a positive fiscal impact on local governments in the Florida Keys Area of Critical State Concern, and no impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,[1] are authorized to designate certain areas within the state that contain resources of statewide significance as areas of critical state concern.[2] An area of critical state concern may be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;[3]
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts;[4] or
- Having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, highways, ports, airports, energy facilities, and water management projects.[5]

The designated areas of critical state concern in the state are: the Big Cypress Area,[6] the Green Swamp Area,[7] the Florida Keys Area, the City of Key West Area,[8] and the Apalachicola Bay Area.[9]

The Florida Keys Area of Critical State Concern

Present Situation

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Key West,[10] Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.[11] The designation is intended to:

- Establish a land use management system that protects the natural environment of the Florida Keys; conserves and promotes the community character of the Florida Keys; promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services; and promotes and supports a diverse and sound economic base;[12]
- Provide affordable housing in close proximity to places of employment in the Florida Keys;[13]

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[1] *See* ss. 380.031(1) and 14.202, F.S.
[2] Section 380.05, F.S.
[3] Section 380.05(2)(a), F.S.
[4] Section 380.05(2)(b), F.S.
[5] Section 380.05(2)(c), F.S.
[6] Section 380.055, F.S.
[7] Section 380.0551, F.S.
[8] Section 380.0552, F.S.
[9] Section 380.0555, F.S.
[10] The City of Key West challenged the designation as a critical area and after litigation in 1984 was given its own area of critical state concern designation. *See 2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[11] Section 380.0552, F.S.; *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[12] Section 380.0552(2)(a)-(c) and (e), F.S.
[13] Section 380.0552(2)(d), F.S.

- Protect the constitutional rights of property owners to own, use, and dispose of their real property;[14]
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;[15]
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;[16]
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable;[17] and
- Ensure that the population of the Florida Keys can be safely evacuated.[18]

State, regional and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development that:

- Strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation;[19]
- Protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;[20]
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (e.g., hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat;[21]
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;[22]
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;[23]
- Enhance natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys;[24]
- Protect the historical heritage of the Florida Keys; [25]
- Protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
    - The Florida Keys Aqueduct and water supply facilities;
    - Sewage collection, treatment, and disposal facilities;
    - Solid waste treatment, collection, and disposal facilities;
    - Key West Naval Air Station and other military facilities;
    - Transportation facilities;
    - Federal parks, wildlife refuges, and marine sanctuaries;
    - State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
    - City electric service and the Florida Keys Electric Co-op; and
    - Other utilities, as appropriate;[26]
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and

[14] Section 380.0552(2)(f), F.S.
[15] Section 380.0552(2)(g), F.S.
[16] Section 380.0552(2)(h), F.S.
[17] Section 380.0552(2)(i), F.S.
[18] Section 380.0552(2)(j), F.S.
[19] Section 380.0552(7)(a), F.S.
[20] Section 380.0552(7)(b), F.S.
[21] Section 380.0552(7)(c), F.S.
[22] Section 380.0552(7)(d), F.S.
[23] Section 380.0552(7)(e), F.S.
[24] Section 380.0552(7)(f), F.S.
[25] Section 380.0552(7)(g), F.S.
[26] Section 380.0552(7)(h), F.S.

disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems;[27]
- Ensure the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems;[28]
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;[29]
- Make available adequate affordable housing for all sectors of the population of the Florida Keys;[30]
- Provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan;[31] and
- Protect the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.[32]

Section 380.0552(9)(a), F.S., provides that a land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency[33] (DEO). Amendments to local comprehensive plans must also be reviewed for compliance with the following:
- Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed criteria for wastewater treatment and disposal facilities or onsite sewage treatment and disposal systems; and
- Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by DEO.[34]

In 2011, the Administration Commission, directed DEO and the Division of Emergency Management to enter into a Memorandum of Understanding (MOU) with Monroe County, Village of Islamorada, and the cities of Marathon, Key West, Key Colony Beach, and Layton regarding hurricane evacuation modeling.[35] The MOU is the basis for an analysis on the maximum build-out capacity of the Florida Keys while maintaining the ability of the permanent population to evacuate within 24 hours.[36] Based on the MOU that stipulates the input variables and assumptions, DEO has determined that an additional 3,550 residential building allocations could be constructed while still maintaining the 24-hour hurricane evacuation clearance time.[37] Thus, once 3,550 additional residential units are constructed, the evacuation time for the Florida Keys will be at the 24-hour mark. Unless the highway is widened or

[27] Section 380.0552(7)(i), F.S.
[28] Section 380.0552(7)(j), F.S.
[29] Section 380.0552(7)(k), F.S.
[30] Section 380.0552(7)(l), F.S.
[31] Section 380.0552(7)(m), F.S.
[32] Section 380.0552(7)(n), F.S.
[33] Section 380.031(18), F.S., defines the "state land planning agency" as the Department of Economic Opportunity.
[34] Section 380.0552(9)(a)1. and 2., F.S.
[35] DEO Florida Keys Hurricane Evacuation available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys/florida-keys-hurricane-evacuation.
[36] *Id.*
[37] *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.

s. 380.0552(9)(a)2., F.S., is amended to allow additional hurricane evacuation times, no new residential permits could be issued for the area.[38]

Effect of Proposed Changes

The bill amends s. 380.0552(2)(i), F.S., relating to the Florida Keys Area of Critical State Concern, providing that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities.

The bill also amends s. 380.0552(7)(i), F.S., to provide additional principles for guiding development within the Florida Keys Area of Critical State Concern. Development plans must be consistent with the principle of protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of other water quality and water supply projects, including direct and indirect potable reuse.

Purchase of Lands in Areas of Critical State Concern

Present Situation

Within 45 days of being designated as an area of critical state concern, the Department of Environmental Protection (DEP) must consider the recommendations of DEO relating to the purchase of lands within the proposed area and must make recommendations to the Board of Trustees of the Internal Improvement Trust Fund[39] (Board) with respect to the purchase of fee or any lesser interest in any lands situated in an area of critical state concern as environmentally endangered lands or outdoor recreation lands.[40] DEP, and a land authority within an area of critical state concern,[41] may make recommendations with respect to additional purchases which were not included in DEO's recommendations.

In carrying out the purposes of the areas of critical state concern program, the land authority is also authorized to:

- Acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area, or provide access to management of acquired lands;
- Acquire interests in land by means of land exchanges;
- Contribute tourist impact tax revenues received to its most populous municipality or the housing authority of such municipality, at the request of the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality; and
- Enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements.[42]

[38] *Id.*
[39] Section 259.03(2), F.S.
[40] Section 259.045, F.S.
[41] Section 380.0663, F.S., provides that each county in which one or more areas of critical state concern are located is authorized to create, by ordinance, a public body corporate and politic, to be known as a land authority.
[42] Section 380.0666(3), F.S.

Effect of Proposed Changes

The bill amends s. 259.045, F.S., to require DEP to annually consider the recommendations of DEO relating to purchases of land within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern. These may include lands used to preserve and protect water supply, and to make recommendations to the Board with respect to the purchase of fee or any lesser interest in lands that are:

- Environmentally endangered lands;
- Outdoor recreation lands;
- Lands that conserve sensitive habitat;
- Lands that protect, restore, or enhance nearshore water quality and fisheries;
- Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or
- Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The bill also allows local governments and special districts within an area of critical state concern to make recommendations to the Board for additional purchases that were not included in DEO's recommendations.

The bill amends s. 380.0666(3), F.S., to authorize a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern. The bill also allows a land authority to contribute funds to DEP for the purchase of lands by DEP. The bill provides that an acquisition or contribution is not to be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

Discretionary Sales Surtaxes

Present Situation

There are eight discretionary sales surtaxes that serve as potential revenue sources for county and municipal governments and school districts.[43] They are:

- The charter county and regional transportation system surtax;[44]
- The local government infrastructure surtax;[45]
- The small county surtax;[46]
- The indigent care and trauma center surtax;[47]
- The county public hospital surtax;[48]
- The school capital outlay surtax;[49]
- The voter-approved indigent care surtax;[50] and
- The emergency fire rescue services and facilities surtax.[51]

[43] Section 212.055, F.S.
[44] Section 212.055(1), F.S.
[45] Section 212.055(2), F.S.
[46] Section 212.055(3), F.S.
[47] Section 212.055(4), F.S.
[48] Section 212.055(5), F.S.
[49] Section 212.055(6), F.S.
[50] Section 212.055(7), F.S.
[51] Section 212.055(8), F.S.

The Local Government Infrastructure Surtax

A county may levy a discretionary sales surtax of 0.5 percent or 1 percent pursuant to ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.[52] If municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and will take effect if approved by a majority of the electors of the county voting on the surtax.[53]

Surtax proceeds and any accrued interest must be expended by the school district within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of DEP.[54]

Proceeds and any interest may not be used for operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure.[55]

For purposes of the local government infrastructure surtax, the term "infrastructure" means:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs;[56]
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years;[57]
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities;[58]
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government;[59] or
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.[60]

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[52] Section 212.055(2)(a)1., F.S.
[53] *Id.*
[54] Section 212.055(2)(d), F.S.
[55] *Id.*
[56] Section 212.055(2)(d)1.a., F.S.
[57] Section 212.055(2)(d)1.b., F.S.
[58] Section 212.055(2)(d)1.c., F.S.
[59] Section 212.055(2)(d)1.d., F.S.
[60] Section 212.055(2)(d)1.e., F.S.

Effect of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., to expand the purposes for which proceeds and accrued interest from the local government infrastructure surtax can be used to include acquiring *any interest* in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The bill amends the definition of "infrastructure" in s. 212.055(2)(d)1.a., F.S., to include any fixed capital expenditure or capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, including all other professional and related costs required to bring public facilities into service. By including "all other professional and related costs" the bill expands the array of costs that can be paid from this surtax. Such an expansion may include costs associated with land acquisition or attorney fees among other related costs.

The bill also defines the term "public facilities" to mean facilities as defined in three other sections of law, regardless of whether the facilities are owned by the local taxing authority or another governmental entity. The three sections of law are:

- Section 163.3164(38), F.S., which defines the term "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities;
- Section 163.3221(13), F.S., which defines the term "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities; or
- Section 189.012(5), F.S., which defines the term "public facilities" as major capital improvements, including transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), F.S., spoil disposal sites for maintenance dredging in waters of the state.

Everglades Restoration Bonds

Present Situation

Everglades restoration bonds are issued to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan,[61] the Lake Okeechobee Watershed Protection Plan,[62] the Caloosahatchee River Watershed Protection Plan,[63] the St. Lucie River Watershed Protection Plan,[64] and the Florida Keys Area of Critical State Concern[65] protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Keys Wastewater Plan[66].[67]

Everglades restoration bonds, except refunding bonds, may only be issued in Fiscal Years 2002-2003 through 2019-2020, and may not be issued in an amount exceeding $100 million per fiscal year, unless:

[61] Section 373.470, F.S.
[62] Section 373.4595, F.S.
[63] *Id.*
[64] *Id.*
[65] Sections 380.05 and 380.0552, F.S.
[66] *Keys Wastewater Plan*, available at http://www.monroecounty-fl.gov/DocumentView.aspx?DID=478.
[67] Section 215.619(1), F.S.

- DEP requests additional amounts to achieve cost savings or accelerate the purchase of land;[68] or
- The Legislature authorizes an additional amount of bonds not to exceed $200 million, limited to $50 million per fiscal year, to fund the Florida Keys Area of Critical State Concern protection program. Proceeds from the bonds must be managed by DEP for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.[69]

The Legislature authorized the issuance of $50 million in Everglades restoration bonds in Fiscal Year 2012-2013 and Fiscal Year 2014-2015 to fund wastewater treatment efforts in the Florida Keys.[70]

The duration of Everglades restoration bonds may not exceed 20 annual maturities and must mature by December 31, 2040.[71]

Effect of Proposed Changes

The bill amends s. 215.619(1), F.S., to provide that the City of Key West Area of Critical State Concern may receive Everglades restoration bonds and adds certain other projects for which Everglades restoration bonds may be issued to include projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects, and projects to protect water resources available to the Florida Keys.

The bill amends s. 215.619(1)(a), F.S., regarding the timeframe in which Everglades restoration bonds may be issued, extending the timeframe from Fiscal Year 2019-2020 to Fiscal Year 2026-2027.

The bill amends s. 215.619(1)(a)2., F.S., regarding the conditions under which Everglades restoration bonds may be issued in an amount exceeding $100 million per fiscal year. The bill provides that beginning in Fiscal Year 2016-2017 bonds may not be issued in excess of $100 million per fiscal year unless the Legislature authorizes an additional amount not to exceed $200 million, limited to $20 million per fiscal year to fund the Florida Keys Area of Critical State Concern protection program and the City of Key West Area of Critical State Concern.

The bill also provides that proceeds from the bonds may be used to finance or refinance the cost of building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys.

The bill amends s. 215.619(1)(b), F.S., regarding the maturation date of Everglades restoration bonds, increasing the maturation date from December 31, 2040, to December 31, 2047.

The bill also creates s. 215.619(7), F.S., to address certain surplused lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside of the Florida Keys Area of Critical State Concern.[72] The bill provides that if the South Florida Water Management District and DEP determine that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside the Florida Keys Area of Critical State Concern were purchased to preserve

[68] Section 215.619(1)(a)1., F.S.
[69] Section 215.619(1)(a)2., F.S.
[70] DEP's analysis of HB 447, on file with the Agriculture & Natural Resources Subcommittee; *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[71] Section 215.619(1)(b), F.S.
[72] Section 215.619(6), F.S., provides a similar process for surplused lands within the Northern Everglades and Estuaries Protection Program.

and protect the potable water supply to the Florida Keys and are no longer needed for the purpose for which they were purchased, the entity owning the lands may dispose of them. However, before the lands can be disposed of, each local government within whose boundaries a portion of the land lies must agree to the disposal of lands within its boundaries and must be offered the first right to purchase.[73]

The Florida Forever Act

Present Situation

The Florida Forever Act is a land acquisition program to conserve the state's natural resources and cultural heritage.[74] The proceeds of cash payments or bonds used under the Florida Forever Act are deposited into the Florida Forever Trust Fund and are distributed by DEP as follows:

- Thirty percent to DEP for the acquisition of lands and capital project expenditures necessary to implement water management districts' priority lists;[75]
- Thirty-five percent to DEP for the acquisition of lands and capital project expenditures. Priority should be given to those acquisitions which achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge;[76]
- Twenty-one percent to DEP for use by the Florida Communities Trust, and grants to local governments or nonprofit environmental organizations that are tax-exempt under s. 501(c)(3) of the United States Internal Revenue Code for the acquisition of community-based projects, urban open spaces, parks, and greenways to implement local government comprehensive plans;[77]
- Two percent to DEP for grants pursuant to the Florida Recreation Development Assistance Program;[78]
- One and five-tenths percent to DEP for the purchase of inholdings and additions to state parks and for capital project expenditures;[79]
- One and five-tenths percent to the Florida Forest Service of the Department of Agriculture and Consumer Services (DACS) to fund the acquisition of state forest inholdings and additions, the implementation of reforestation plans or sustainable forestry management practices, and for capital project expenditures;[80]
- One and five-tenths percent to the Fish and Wildlife Conservation Commission to fund the acquisition of inholdings and additions to lands managed by the commission which are important to the conservation of fish and wildlife and for capital project expenditures;[81]
- One and five-tenths percent to DEP for the Florida Greenways and Trails Program, to acquire greenways and trails or greenways and trail systems, including, but not limited to, abandoned railroad rights-of-way and the Florida National Scenic Trail and for capital project expenditures;[82]
- Three and five-tenths percent to DACS for the acquisition of agricultural lands, through perpetual conservation easements and other perpetual less-than-fee techniques, which will achieve the objectives of Florida Forever;[83] and

[73] Generally, procedures for the surplus of lands do not require local governments to agree prior to surplus. *See* ss. 253.111, 215.619, and 253.034, F.S.
[74] Section 259.105, F.S.
[75] Section 259.105(3)(a), F.S.
[76] Section 259.105(3)(b), F.S.
[77] Section 259.105(3)(c), F.S.
[78] Section 259.105(3)(d), F.S.
[79] Section 259.105(3)(e), F.S.
[80] Section 259.105(3)(f), F.S.
[81] Section 259.105(3)(g), F.S.
[82] Section 259.105(3)(h), F.S.
[83] Section 259.105(3)(i), F.S.

- Two and five-tenths percent to DEP for the acquisition of land and capital project expenditures necessary to implement the Stan Mayfield Working Waterfronts Program within the Florida Communities Trust. [84]

Effect of Proposed Changes

The bill amends s. 259.105(3)(b), F.S., to provide that, beginning in Fiscal Year 2016-2017 and continuing through fiscal year 2026-2027, at least $5 million of the proceeds distributed to DEP for the acquisition of lands and capital project expenditures must be spent on land acquisition within the Florida Keys Area of Critical State Concern.

B. SECTION DIRECTORY:

Section 1. Provides the act may be cited as the "Florida Keys Stewardship Act."

Section 2. Amends s. 212.055(2), F.S., regarding local government infrastructure surtaxes.

Section 3. Amends s. 215.619, F.S., regarding bonds for Everglades restoration.

Section 4. Amends s. 259.045, F.S., regarding purchases of lands in areas of critical state concern.

Section 5. Amends s. 259.105, F.S., regarding the Florida Forever Act.

Section 6. Amends s. 380.0552, F.S., regarding the Florida Keys Area of Critical State Concern.

Section 7. Amends s. 380.0666, F.S., regarding the powers of the land authority.

Section 8. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Everglades Restoration Bonds

   The bill lowers the per year authorization of bonding from $50 million to $20 million for the Florida Keys Area of Critical State Concern beginning Fiscal Year 2016-2017 and expands the use of such bonds to include the City of Key West Area of Critical State Concern. In addition, the types of construction projects authorized are expanded to include building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys.

   Current statute authorizes bonding up to $200 million in total for the Florida Keys Area of Critical State Concern. In Fiscal Years 2012-2013 and 2014-2015, the Legislature appropriated a total of $100 million, or half of the amount authorized. The bill authorizes additional bonding authority of $200 million for the expanded purposes outlined in the bill, beginning in Fiscal Year 2016-2017. The bill extends the duration date for the maturity of bonds from December 31, 2040, to December 31, 2047.

[84] Section 259.105(3)(j),F.S.

The Fiscal Year 2016-2017 House proposed General Appropriations Act includes $25 million in bonding for the Florida Keys Area of Critical State Concern protection program to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

The Florida Forever Act

Pursuant to s. 259.105, F.S., DEP receives 35 percent of the funds appropriated through the Florida Forever Act for acquisition of lands and capital projects. The bill requires that from Fiscal Year 2016-2017 through 2026-2027, at least $5 million from the 35 percent distribution to DEP be allocated for land acquisition within the Florida Keys Area of Critical State Concern.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill authorizes the Legislature to bond an additional $200 million for the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern.

The bill requires that from Fiscal Year 2016-2017 through 2026-2027, at least $5 million distributed to DEP through the Florida Forever Act be allocated for land acquisition within the Florida Keys Area of Critical State Concern.

2. Expenditures:

None.

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. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Amends the purposes for which the local government infrastructure surtax can be used to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern;
- Amends the uses for Everglades restoration bonds can be used to include projects that protect, restore or enhance nearshore water quality and fisheries, and protect water resources available to the Florida Keys;
- Amends the maturation date of Everglades restoration bonds, increasing the maturation date from December 31, 2040, to December 31, 2047;
- Removes the requirement that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside of the Florida Keys Area of Critical State Concern must have been required to be purchased to preserve and protect the potable water supply to the Florida Keys before they can be surplused. Revises the surplus procedure for such lands;
- Removes legislative findings and declarations of the Florida Forever Act that included coral reefs;
- Provides that it is the Legislature's intent to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities; and
- Authorizes a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, and to contribute funds to DEP for the purchase of lands by DEP. Specifies that the acquisition or contribution must not be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

On February 9, 2016, the Agriculture & Natural Resources Appropriations Subcommittee adopted two amendments and reported the bill favorably with a committee substitute. The amendments:

- Remove, from the bonding provisions in s. 215.619 F.S., alternative water supply projects such as reverse osmosis and reclaimed water systems; and
- Remove the requirement that if $20 million in bonds are not authorized from Fiscal Year 2016-2017 through Fiscal Year 2026-2027, then $20 million is to be appropriated to DEP to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern.

This analysis is drafted to the committee substitute for the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.

A bill to be entitled

An act relating to local government environmental financing; providing a short title; amending s. 212.055, F.S.; expanding the uses of local government infrastructure surtaxes to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; revising definitions for purposes of using surtax proceeds; amending s. 215.619, F.S.; expanding the use of Everglades restoration bonds to include the City of Key West Area of Critical State Concern; expanding the types of water management projects eligible for funding; revising the dates for issuance and maturity of Everglades restoration bonds; reducing the annual appropriation amount dedicated to fund the Florida Keys Area of Critical State Concern protection program; authorizing bond proceeds to be spent on the City of Key West Area of Critical State Concern; expanding projects that may be funded by bond proceeds; specifying procedures to be followed for certain lands that are no longer needed for certain restoration purposes; amending s. 259.045, F.S.; requiring the Department of Environmental Protection

to annually consider certain recommendations to buy specific lands within and outside an area of critical state concern; authorizing certain local governments and special districts to recommend additional lands for purchase; amending s. 259.105, F.S.; requiring specific Florida Forever appropriations to be used for the purchase of lands in the Florida Keys Area of Critical State Concern; amending s. 380.0552, F.S.; revising legislative intent regarding the Florida Keys Area of Critical State Concern; specifying that plan amendments in the Florida Keys must also be consistent with protecting and improving specified water quality and water supply projects; amending s. 380.0666, F.S.; expanding powers of a land authority to include acquiring lands to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern and contribute funds for certain land purchases by the department; providing limitations relating to acquiring or contributing lands to improve public transportation facilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Florida Keys

Stewardship Act."

Section 2. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of

critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more

years, ~~and~~ any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(38), s. 163.3221(13), or s. 189.012(5), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the

local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building

modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 3. Subsection (1) of section 215.619, Florida Statutes, is amended, subsections (7) and (8) are renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to that section, to read:

215.619 Bonds for Everglades restoration.—

(1) The issuance of Everglades restoration bonds to finance or refinance the cost of the acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan under s. 373.470, the Lake

Okeechobee Watershed Protection Plan under s. 373.4595, the Caloosahatchee River Watershed Protection Plan under s. 373.4595, the St. Lucie River Watershed Protection Plan under s. 373.4595, the City of Key West Area of Critical State Concern as designated by the Administration Commission under s. 380.05, and the Florida Keys Area of Critical State Concern protection program under ss. 380.05 and 380.0552 in order to restore and conserve natural systems through ~~the~~ implementation of water management projects, including projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects, projects to protect water resources available to the Florida Keys, including wastewater management projects identified in the Keys Wastewater Plan, dated November 2007, and submitted to the Florida House of Representatives on December 4, 2007, is authorized in accordance with s. 11(e), Art. VII of the State Constitution.

(a) Everglades restoration bonds, except refunding bonds, may be issued only in fiscal years 2002-2003 through 2026-2027 ~~2019-2020~~ and may not be issued in an amount exceeding $100 million per fiscal year unless:

1. The Department of Environmental Protection has requested additional amounts in order to achieve cost savings or accelerate the purchase of land; or

2. Beginning in fiscal year 2016-2017, the Legislature authorizes an additional amount of bonds not to exceed $200 million, and limited to $20 ~~$50~~ million per fiscal year,

specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program and the City of Key West Area of Critical State Concern. Proceeds from the bonds shall be managed by the Department of Environmental Protection for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities or building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys.

(b) The duration of Everglades restoration bonds may not exceed 20 annual maturities and must mature by December 31, 2047 ~~2040~~. Except for refunding bonds, a series of bonds may not be issued unless an amount equal to the debt service coming due in the year of issuance has been appropriated by the Legislature. Not more than 58.25 percent of documentary stamp taxes collected may be taken into account for the purpose of satisfying an additional bonds test set forth in any authorizing resolution for bonds issued on or after July 1, 2015. Beginning July 1, 2010, the Legislature shall analyze the ratio of the state's debt to projected revenues before authorizing the issuance of bonds under this section.

(7) If the South Florida Water Management District and the

Department of Environmental Protection determine that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside the Florida Keys Area of Critical State Concern but which were purchased to preserve and protect the potable water supply to the Florida Keys are no longer needed for the purpose for which they were purchased, the entity owning the lands may dispose of them. However, before the lands can be disposed of, each general purpose local government within the boundaries of which a portion of the land lies must agree to the disposal of lands within its boundaries and must be offered the first right to purchase those lands.

Section 4. Section 259.045, Florida Statutes, is amended to read:

259.045 Purchase of lands in areas of critical state concern; recommendations by department and land authorities.—Within 45 days after ~~of the designation by~~ the Administration Commission designates ~~of~~ an area as an area of critical state concern under s. 380.05, and annually thereafter, the Department of Environmental Protection shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, ~~the proposed area~~ and shall make recommendations to the board with

respect to the purchase of the fee or any lesser interest in any such lands that are: ~~situated in such area of critical state concern as~~

(1) Environmentally endangered lands; ~~or~~

(2) Outdoor recreation lands;

(3) Lands that conserve sensitive habitat;

(4) Lands that protect, restore, or enhance nearshore water quality and fisheries;

(5) Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or

(6) Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The department, or a local government, special district, or ~~and a~~ land authority within an area of critical state concern ~~as authorized in chapter 380~~, may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

Section 5. Paragraph (b) of subsection (3) of section 259.105, Florida Statutes, is amended to read:

259.105 The Florida Forever Act.—

(3) Less the costs of issuing and the costs of funding reserve accounts and other costs associated with bonds, the proceeds of cash payments or bonds issued pursuant to this

section shall be deposited into the Florida Forever Trust Fund created by s. 259.1051. The proceeds shall be distributed by the Department of Environmental Protection in the following manner:

(b) Thirty-five percent to the Department of Environmental Protection for the acquisition of lands and capital project expenditures described in this section. Of the proceeds distributed pursuant to this paragraph, it is the intent of the Legislature that an increased priority be given to those acquisitions which achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge. At a minimum, 3 percent, and no more than 10 percent, of the funds allocated pursuant to this paragraph shall be spent on capital project expenditures identified during the time of acquisition which meet land management planning activities necessary for public access. Beginning in fiscal year 2016-2017 and continuing through fiscal year 2026-2027, at least $5 million of the funds allocated pursuant to this paragraph shall be spent on land acquisition within the Florida Keys Area of Critical State Concern.

Section 6. Paragraph (i) of subsection (2) and paragraph (i) of subsection (7) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; ~~and~~ the installation and proper operation and maintenance of onsite sewage treatment and

disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.

Section 7. Subsection (3) of section 380.0666, Florida Statutes, is amended to read:

380.0666 Powers of land authority.—The land authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers, which are in addition to all other powers granted by other provisions of this act:

(3) To acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area, prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, or provide access to management of acquired lands; to acquire interests in land by means of land exchanges; to contribute tourist impact tax revenues received pursuant to s. 125.0108 to its most populous municipality or the housing authority of such municipality, at the request of the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality; to contribute funds to the Department of

Environmental Protection for the purchase of lands by the department; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority shall make an ~~such~~ acquisition or contribution only if:

(a) Such acquisition or contribution is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;

(b) The property acquired is within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation; ~~and~~

(c) The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs; and

(d) The acquisition or contribution is not used to improve public transportation facilities or otherwise increase road

capacity to reduce hurricane evacuation clearance times.

Section 8. This act shall take effect July 1, 2016.

CODING: Words stricken are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 533 Arthur G. Dozier School for Boys
SPONSOR(S): Appropriations Committee; Government Operations Subcommittee; Narain and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Moore	Williamson
2) Appropriations Committee	22 Y, 1 N, As CS	Proctor	Leznoff
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The Arthur G. Dozier School for Boys (Dozier School or school) was a reform school located in the panhandle town of Marianna that was operated by the state from January 1, 1900, to June 30, 2011. In recent years, former students of the school have come forward to tell stories of repeated physical abuse they were subjected to by staff members as a form of discipline. These men believe there may have been fellow students who died from the abuse and were buried at the school's cemetery.

In 2012, researchers from the University of South Florida (USF) began an investigation to determine the location of missing children buried at the school in order to excavate and repatriate the remains to their families. In January 2016, the researchers issued a report of their findings. The researchers analyzed historical records and determined that nearly 100 boys aged 6 to 18 died at the school between 1900 and 1973. During the investigation, the researchers excavated 55 graves and discovered 51 sets of human remains on the school grounds, only 13 of which were located in the school's cemetery. The researchers made 7 positive identifications and 14 presumptive identifications of the remains they discovered.

The bill requires any historical resource, record, archive, or artifact and any human remains that are recovered from Dozier School to be retained and preserved by USF until the Department of State (DOS) requests custody.

The bill also directs DOS to reimburse the next of kin or pay directly to the provider up to $7,500 for funeral, reinterment, and grave marker expenses for each child whose body was buried at and exhumed from Dozier School. DOS must contract with USF to identify and locate eligible next of kin of such children.

The bill establishes a task force under DOS to make recommendations to DOS regarding the creation and maintenance of a memorial and the location of a site for the reinterment of unidentified or unclaimed remains.

For Fiscal Year (FY) 2016-17, the bill appropriates $500,000 in nonrecurring funds from the General Revenue Fund to DOS to implement the bill's requirements. Any funds remaining unexpended or unencumbered as of July 1, 2017, must revert and be appropriated for the same purpose for FY 2017-18.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Arthur G. Dozier School for Boys

The Arthur G. Dozier School for Boys (Dozier School or school) was a reform school located in the panhandle town of Marianna that was operated by the state from January 1, 1900, to June 30, 2011. The school was created by the Florida Legislature in 1897 to provide a place "where young offenders against the laws of our state might be separated from older more vicious associates."[1] Children were initially committed to the school for criminal offenses, but the law was later amended to identify minor offenses, such as "incorrigibility," "truancy," or "dependency" as reasons for a child to be sent there.[2] Throughout the 1900s, hundreds of boys were sent to the school.

In recent years, men have come forward to tell stories of repeated physical abuse they were subjected to by staff members as a form of discipline.[3] These men believe there may have been fellow students who died from the abuse and were buried at the school's cemetery.[4] As a result of these allegations, in 2008, former Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on property surrounding Dozier School. FDLE reviewed and analyzed public records and official documents and identified 31 individuals who were purportedly buried at the school's cemetery.[5] FDLE was also directed to determine whether any crimes were committed, and if so, the perpetrators of those crimes.[6] FDLE interviewed former students and former school staff, but concluded it could not find enough evidence to support the accusations.[7]

In 2012, researchers from the University of South Florida (USF) began an investigation to determine the location of missing children buried at the school in order to excavate and repatriate the remains to their families.[8] In January 2016, the researchers issued a report of their findings. The researchers analyzed historical records and determined that nearly 100 boys aged 6 to 18 died at the school between 1900 and 1973.[9] During the investigation, the researchers excavated 55 graves and discovered 51 sets of human remains on the school grounds, only 13 of which were located in the school's cemetery.[10] The researchers made 7 positive identifications and 14 presumptive identifications of the remains they discovered.[11]

Department of State

The Department of State (DOS) has a variety of responsibilities, including collecting and preserving official state records and historically significant records, promoting arts and culture in the state, and facilitating cultural development and services in the state. The Division of Historical Resources, within

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[1] FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys Abuse Investigation*, Case No. EI-04-0005 (Jan. 29, 2010), *available at* http://thewhitehouseboys.com/abusereport.pdf [hereinafter FDLE Abuse Report].

[2] Erin Kimmerle, E. Christian Wells, & Antoinette Jackson, Florida Institute for Forensic Anthropology & Applied Sciences, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, January 2016, *available at* http://news.usf.edu/article/articlefiles/7173-usf-final-dozier-summary-2016.pdf.

[3] FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys: Marianna, Florida*, Case No. EI-73-8455 (May 14, 2009), p.1, *available at* http://www.tampabay.com/specials/2009/reports/marianna/Dozier-summary.pdf.

[4] *Id.* at 1.

[5] *Id.* at 18.

[6] FDLE Abuse Report, *supra* note 1, at 1.

[7] *See id.* at 13.

[8] Kimmerle, *supra* note 2, at 12.

[9] *Id.* at 14.

[10] *Id.* at 12.

[11] *Id.*

DOS, is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources.

Advisory Bodies

Section 20.052, F.S., provides that an advisory body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements. An advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose,[12] and it must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of the public purpose.[13] The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.[14]

Effect of Proposed Changes

The bill requires USF to retain custody of any historical resource, record, archive, artifact, public research, or medical record recovered from Dozier School until DOS requests custody. USF must also retain custody of any human remains exhumed from the school until the remains are returned to the next of kin or reburied. DOS is directed to contract with USF for the identification and location of eligible next of kin for the children whose remains were exhumed.

The bill also directs DOS to reimburse the next of kin or pay directly to the provider up to $7,500 for each child's funeral, reinterment, and grave marker expenses. To receive reimbursement, the next of kin must submit receipts for or documentation of expenses to DOS. If expenses are to be paid directly to the provider, the funeral home or other similar entity must submit an invoice to DOS. The reimbursements and payments must be made in accordance with current prompt payment laws. Charitable donations made toward a burial are not eligible for reimbursement. DOS must report to the Legislature on the status of its payments and reimbursements by February 1, 2018.

By July 1, 2016, USF must provide DOS with the contact information for the next of kin for each set of human remains that has been returned to a next of kin. For any identification of next of kin occurring on or after July 1, 2016, USF must provide location information of the next of kin to DOS at least 5 days before returning the human remains to the next of kin. DOS must notify the next of kin within 15 business days about the available payment or reimbursement options.

The bill establishes an eight-member task force known as the "Dozier Task Force" under DOS to make recommendations to DOS regarding the creation and maintenance of a memorial, and the location of a site for the reinterment of unidentified or unclaimed remains. The bill designates the following task force members:

- The Secretary of State, or his or her designee, who must serve as the chair;
- One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People;
- One representative of the Florida Council of Churches, appointed by the executive director of the council;
- A next of kin of a deceased ward buried at Dozier School appointed by the Attorney General;
- One representative who promotes the welfare of people who are former wards of Dozier School appointed by the Chief Financial Officer;
- One person appointed by the President of the Senate;
- One person appointed by the Speaker of the House of Representatives; and
- One person appointed by the Jackson County Board of County Commissioners.

[12] Section 20.052(1), F.S.
[13] Section 20.052(2), F.S.
[14] Section 20.052(5)(a), F.S.

By October 1, 2016, the task force must submit its recommendations to DOS, the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives. The bill repeals the task force on December 31, 2016.

The bill authorizes DOS to adopt rules necessary to administer the bill's requirements.

For Fiscal Year (FY) 2016-17, the bill appropriates $500,000 in nonrecurring funds from the General Revenue Fund to DOS to implement the bill's requirements and provides that any unexpended or unencumbered funds must revert on July 1, 2017, and be appropriated for the same purpose for FY 2017-2018.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law relating to the preservation of Dozier School records and artifacts and compensation for families with children buried at the school.

Section 2 creates an unnumbered section of law relating to the establishment of the Dozier Task Force.

Section 3 provides an appropriation.

Section 4 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $500,000 in nonrecurring funds from the General Revenue Fund to DOS for the purpose of providing funds to the next of kin of children buried at Dozier School, or directly to a provider, funeral home, or other similar entity, so the bodies may be reinterred. It also provides that any unexpended or unencumbered funds must revert on July 1, 2017, and be appropriated for the same purpose for FY 2017-2018.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOS to adopt rules to administer the bill's requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Increased the maximum amount of money that may be paid for funeral, reinterment, and grave marker expenses to the next of kin of each child who was buried at the school from $5,000 to $7,500;
- Required the next of kin to submit receipts to DOS to receive reimbursement;
- Authorized DOS to pay a funeral home or other similar entity directly upon receipt of an invoice;
- Required DOS to identify and locate eligible next of kin by December 31, 2017, instead of within six months of the bill's effective date;
- Required DOS to report to the Legislature on the status of payments and reimbursements;
- Established a task force to make recommendations to DOS regarding the creation of a memorial and the location of a site for the reinterment of unidentified or unclaimed remains; and
- Reduced the amount of funds appropriated to DOS from $1.5 million to $500,000.

On February 16, 2016, the Appropriations Committee adopted a strike-all amendment. The strike-all amendment:

- Required any records or archives recovered from Dozier School by USF to remain in the custody of USF for preservation until DOS requests custody;
- Required any human remains exhumed from Dozier School by USF to remain in their custody for identification purposes until the remains are returned to the next of kin or reburied;
- Directed DOS to contract with USF for the identification and location of eligible next of kin;
- Directed USF, no later than July 1, 2016, to provide DOS with contact information for the next of kin for each set of human remains that has been returned to a next to kin;
- Required USF to provide location information of identified next of kin to DOS at least 5 days before returning the human remains to the next of kin;
- Required DOS to notify the next of kin about the payment or reimbursement options within 15 business days after receiving the location information of the next of kin;
- Required DOS, by February 1, 2018, to submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding any payments and reimbursements made pursuant to the bill;
- Prescribed the membership of the task force and the submission of its recommendations; and
- Delayed the repeal date for the task force to December 31, 2016.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as approved by the Appropriations Committee.

A bill to be entitled

An act relating to the Arthur G. Dozier School for Boys; requiring certain historical resources, records, archives, artifacts, researches, medical records, and human remains to remain in the custody of the University of South Florida; providing exceptions; requiring the Department of State to contract with the university for the identification and location of eligible next of kin of certain children; requiring the department to notify the next of kin of certain payment or reimbursement provisions; requiring the department to reimburse the next of kin of children whose bodies are buried and exhumed or otherwise recovered at the Dozier School for Boys or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; providing a process for reimbursement or payment by the department; providing that a charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement; requiring the department to submit a report; authorizing the department to adopt rules; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains; providing membership of the task force; requiring the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

task force to submit its recommendations by a certain date; providing for future repeal of provisions relating to the task force; providing appropriations; providing an effective date.

WHEREAS, the Arthur G. Dozier School for Boys, or the Dozier School for Boys, operated from 1900 until it was closed in 2011 after allegations of abuse were confirmed in separate investigations by the Department of Law Enforcement in 2010 and the Civil Rights Division of the United States Department of Justice in 2011, and

WHEREAS, official records indicated that 31 graves had been dug at the facility between 1914 and 1952, and

WHEREAS, a forensic investigation by the University of South Florida found that there are no records of where children who died at the Dozier School for Boys are buried and that families were often notified after the child was buried or denied access to their remains at the time of burial, and

WHEREAS, exhumations of bodies began in August 2013, and the excavations yielded 55 burial sites, 24 more sites than reported in official records, and

WHEREAS, one of the bodies exhumed during the forensic investigation was of a child reported missing since 1940, and

WHEREAS, nearly 100 deaths were recorded at the school and 51 sets of remains were exhumed from burials, and additional victims of a fatal fire in 1914 are still buried with the fire

debris on site, and

WHEREAS, many families of children whose bodies have been exhumed lack the resources to properly reinter those children at a suitable location, and

WHEREAS, the State of Florida recognizes an obligation to help the families of children formerly buried at the Dozier School for Boys reinter the bodies of those children, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1)(a) Any historical resource, record, archive, artifact, public research, or medical record that was recovered from the Arthur G. Dozier School for Boys by the University of South Florida shall remain in the custody of the university for archiving and preservation until the Department of State requests custody of such resource, record, archive, artifact, public research, or medical record.

(b) Any human remains exhumed from the Arthur G. Dozier School for Boys by the University of South Florida shall remain in the custody of the university for identification purposes until the remains are returned to the next of kin or reburied pursuant to this act.

(2)(a) The Department of State shall contract with the University of South Florida for the identification and location of eligible next of kin for such children and the update of

information on associated artifacts and materials.

(b) No later than July 1, 2016, the University of South Florida must provide the Department of State with contact information for the next of kin for each set of human remains which has been returned to a next to kin.

(c) For any identification of next of kin occurring on or after July 1, 2016, the University of South Florida must provide location information of the next of kin to the Department of State at least 5 days before returning the human remains to the next of kin.

(d) Beginning July 1, 2016, the Department of State must notify the next of kin responsible for a set of human remains about the payment or reimbursement provisions under subsection (3). Such notification must be made within 15 business days after the department's receipt of the location information of the next of kin.

(3) The Department of State shall reimburse the next of kin or pay directly to the provider up to $7,500 for funeral, reinterment, and grave marker expenses for each child whose body was buried at and exhumed, or otherwise recovered, from the Dozier School for Boys.

(a) In order to receive reimbursement, the next of kin must submit to the department receipts for, or documentation of, expenses. Reimbursement shall be made pursuant to s. 215.422, Florida Statutes.

(b) If expenses are to be paid directly to the provider,

the funeral home or other similar entity must submit an invoice to the department for the cost of the child's funeral, reinterment, and grave marker expenses. Payment shall be made pursuant to s. 215.422, Florida Statutes.

(c) A charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement.

(4) By February 1, 2018, the Department of State shall submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding any payments and reimbursements made pursuant to this section.

(5) The department may adopt rules necessary to administer this section.

Section 2. (1) A task force is established adjunct to the Department of State to advise the department and, except as otherwise provided in this section, shall operate consistent with s. 20.052, Florida Statutes. The task force shall be known as the "Dozier Task Force." The Department of State shall provide administrative and staff support services relating to the functions of the task force.

(2)(a) The task force shall consist of the following members:

1. The Secretary of State, or his or her designee, who shall serve as the chair.

2. One person appointed by the President of the Florida

State Conference of the National Association for the Advancement of Colored People.

3. One representative of the Florida Council of Churches, appointed by the executive director of the council.

4. A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.

5. One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.

6. One person appointed by the President of the Senate.

7. One person appointed by the Speaker of the House of Representatives.

8. One person appointed by the Jackson County Board of County Commissioners.

(b) By October 1, 2016, the task force shall submit its recommendations to the Department of State regarding the creation and maintenance of a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The recommendations shall also be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(3) This section is repealed December 31, 2016.

Section 3. For the 2016-2017 fiscal year, the sum of $500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for the purpose of

implementing this act. Funds remaining unexpended or unencumbered from this appropriation as of July 1, 2017, shall revert and be reappropriated for the same purpose in the 2017-2018 fiscal year.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 773 Special Assessments on Agricultural Lands
SPONSOR(S): Finance and Tax Committee; Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Gregory	Harrington
2) Finance & Tax Committee	12 Y, 0 N	Aldridge	Langston
3) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

A special assessment is a compulsory assessment that confers a specific benefit upon the land burdened by the assessment and is reasonably apportioned among the properties that receive the special benefit. Special assessments are not taxes. Counties and municipalities utilize special assessments as a home rule revenue source to fund certain services and to construct and maintain capital facilities.

Florida's "greenbelt law" allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, ad valorem tax assessments for qualifying lands are lower than tax assessments on lands used for other purposes.

The bill amends ss. 125.01 and 170.01, F.S., to prohibit counties and municipalities from levying or collecting a special assessment for the provision of fire protection on lands classified as agricultural under Florida's greenbelt law.

The Revenue Estimating Impact Conference estimated that this bill will have no impact on state revenue and a negative $6.9 million annual impact on local governments.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. *See* Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Agricultural Land Classification
Section 193.461, F.S., also known as Florida's "greenbelt law" allows properties classified as bona fide agricultural operations to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, ad valorem tax assessments for qualifying lands are lower than tax assessments on lands used for other purposes.

Revenue Sources Based on Home Rule Authority
Florida provides local governments with expansive home rule powers. Given these powers, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. The validity of these fees and assessments depends on compliance with the requirements established in Florida case law.[1]

Special Assessments
While similar, legally imposed special assessments are not taxes. The Florida Supreme Court explained:

> Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a specific benefit upon the land burdened by the assessment.[2]

Counties and municipalities utilize special assessments as a home rule revenue source to fund certain services and to construct and maintain capital facilities. Section 125.01(1)(r), F.S., authorizes the levy of special assessments by county government. Chapter 170, F.S., authorizes the levy of special assessments by municipal governments. Special districts derive authority to levy special assessments through general law or special act creating the district.[3]

Case law establishes two requirements for the imposition of a valid special assessment:
1) Property assessed must derive a special benefit from the improvement or service provided; and
2) The assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.[4]

To determine whether a special assessment confers a special benefit on property, local governments must evaluate whether there is a "logical relationship" between the services provided and the benefit to real property.[5] Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include: garbage disposal,[6] fire protection,[7] fire and rescue services,[8] and stormwater management services.[9]

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[1] *See* Office of Economic and Demographic Research, Local Government Financial Information Handbook, at 9-15 (2013).
[2] City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992).
[3] For example, s. 153.73, F.S., for county water and sewer districts; s. 163.514, F.S., for neighborhood improvement districts; s. 190.021, F.S., for community development districts; and s. 191.009, F.S., for independent special fire control districts.
[4] City of Boca Raton, at 29.
[5] Whisnant v. Stringfellow, 50 So. 2d 885, 885 (Fla. 1951).
[6] Harris v. Wilson, 693 So. 2d 945 (Fla 1997).
[7] South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973).
[8] Lake County v. Water Oak Mgmt Corp., 695 So. 2d 667 (Fla. 1997).

Once an identified service or capital facility satisfies the special benefit test, the local government must fairly apportion the assessment among the benefited properties in a manner consistent with the logical relationship embodied in the special benefit requirement.[10] An apportionment is considered reasonable unless it "so transcend[s] the limits of equality and reason" that it becomes extortion and confiscation of the property assessed.[11] "As long as the amount of the assessment for each tract is not in excess of the proportional benefits as compared to other assessments on other tracts," any method of apportioning the special benefits is valid and need not be mathematically precise.[12] Courts have accepted several apportionment methods.[13]

Generally, a special assessment is collected on an annual ad valorem tax bill. Under such statutory collection procedure, the special assessment is characterized as a "non-ad valorem assessment."[14]

Assessments by Independent Fire Control Districts

An independent special fire control district may levy non-ad valorem assessments for district facilities, fire suppression services, fire protection services, fire prevention services, emergency rescue services, first response medical aid, emergency medical services, and emergency transport services.[15] The provision of such services is recognized as constituting a benefit to real property.[16] If a district levies a non-ad valorem assessment for emergency medical and emergency transport service, then the district must cease charging an ad valorem tax for the service.[17]

Effect of the Proposed Changes

The bill amends ss. 125.01 and 170.01, F.S., to prohibit counties and municipalities from levying or collecting a special assessment for the provision of fire protection services on lands classified as agricultural under Florida's greenbelt law.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.01, F.S., relating to the powers and duties of counties.

Section 2. Amends s. 170.01, F.S., relating to municipalities' authority to provide improvements and levy and collect special assessments.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[9] Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995).
[10] City of Boca Raton, at 29.
[11] Atlantic Coast Line R.R. v. City of Winter Haven, 151 So. 321, 324 (Fla.1933).
[12] City of Boca Raton, at 31.
[13] *See* Atlantic Coast Line R.R., at 323 (accepting front foot rule); Meyer v. City of Oakland Park, 219 So.2d 417, 419 (Fla.1969) (accepting area method); City of Naples v. Moon, 269 So. 2d 355, 358 (Fla.1972) (accepting market value method).
[14] Section 197.3632(1)(d), F.S.
[15] Section 191.009(2)(a) and (b), F.S.
[16] Section 191.009(2)(b)2., F.S.
[17] Section 191.00992)(b)1., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Impact Conference estimated that this bill will have a negative $6.9 million annual impact on local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some owners of lands classified as agricultural may experience a reduction of special assessments as a result of being exempt from county and municipal special assessments for fire protection services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the authority of counties and municipalities to raise revenues by eliminating their ability to levy special assessments for fire protection services on lands classified as agricultural. If this bill qualifies as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the bill prohibits counties and municipalities from levying and collecting special assessments for fire protection services, it does not appear to capture special districts that derive their special assessment authority from separate statutes, such as independent fire control districts in s. 191.009, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to special assessments on agricultural lands; amending ss. 125.01 and 170.01, F.S.; prohibiting counties and municipalities from levying or collecting special assessments on certain agricultural lands for the provision of fire protection services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (r) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

service taxing unit. Notwithstanding any other provision of law, a county may not levy or collect special assessments for the provision of fire protection services on lands classified as agricultural lands under s. 193.461.

Section 2. Subsection (4) is added to section 170.01, Florida Statutes, to read:

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.—

(4) Notwithstanding any other provision of law, a municipality may not levy or collect special assessments for the provision of fire protection services on lands classified as agricultural lands under s. 193.461.

Section 3. This act shall take effect July 1, 2016.

CODING: Words stricken are deletions; words underlined are additions.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 773 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Albritton offered the following:

Amendment (with title amendment)

Remove lines 28-39 and insert:

a county may not levy special assessments for the provision of fire protection services on lands classified as agricultural lands under s. 193.461 unless such property contains a residential dwelling or nonresidential farm building, with the exception of an agricultural pole barn, provided the nonresidential farm building exceeds a just value of $10,000. Such special assessments must be based solely on the special benefit accruing to that portion of the property consisting of the residential dwelling and curtilage, and qualifying nonresidential farm buildings. As used in this paragraph, the term "agricultural pole barn" means a nonresidential farm

building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

Section 2. Subsection (4) is added to section 170.01, Florida Statutes, to read:

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.—

(4) Notwithstanding any other provision of law, a municipality may not levy special assessments for the provision of fire protection services on lands classified as agricultural lands under s. 193.461 unless such property contains a residential dwelling or nonresidential farm building, with the exception of an agricultural pole barn, provided the nonresidential farm building exceeds a just value of $10,000. Such special assessments must be based solely on the special benefit accruing to that portion of the property consisting of the residential dwelling and curtilage, and qualifying nonresidential farm buildings. As used in this subsection, the term "agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

Section 3. This act shall take effect November 1, 2017.

T I T L E A M E N D M E N T

Remove line 7 and insert:

protection services; providing exceptions to the prohibition, subject to certain requirements; defining the term "agricultural pole barn"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Local Government Finance
SPONSOR(S): Finance and Tax Committee; Pilon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	14 Y, 0 N, As CS	Dugan	Langston
2) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, which allows them to use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. In addition, the constitution authorizes local governments to impose ad valorem and other taxes if authorized by general law.

The bill creates s. 166.225, F.S., to grant municipalities the explicit authorization to levy special assessments for law enforcement services if the municipality:

- Apportions the costs of law enforcement services among parcels of real property in reasonable proportion to the benefit received by each parcel;
- Reduces the municipal ad valorem taxes for the first year of the special assessment levy to offset the additional revenues from the assessment;
- Levies and collects the special assessment pursuant to the statutory procedure in s. 197.3632, F.S.; and
- Does not adopt an ad valorem millage rate in the future that exceeds the rate set in the first year of the assessment.

While the bill refers to the new levy as a "special assessment," the bill explicitly states that the levy of the law enforcement services special assessment must be construed as being authorized by general law under ss. 1 and 9, Art. VII, of the State Constitution. Those constitutional provisions authorize local governments to levy ad valorem and other taxes if authorized by general law enacted by the Legislature. Therefore, the "special assessment" authorized by this bill must be considered a new tax authorized by general law, rather than a special assessment.

The bill also creates s. 166.30, F.S., to create an enforcement process for municipalities to recover delinquent revenue sources. The bill provides that, beginning October 1, 2016, any municipality that has designated delinquent revenues that meet at least one the following criteria must issue a procurement request to a collection agency within 30 days of first meeting the criterion. The criteria are:

- Total designated revenues are more than 90 days delinquent and at least $10,000,000;
- Total designated revenues are more than 180 days delinquent and at least $5,000,000; or
- Total designated revenues are more than 270 days delinquent and at least $1,000,000.

A municipality must issue an additional procurement request if it still meets the above criterion one year after issuing a procurement request, exclusive of any amount turned over to a collection agency in response to the first procurement request. However, if a municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous year it is not required to issue a procurement request. Additionally, a municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law.

The Revenue Estimating Conference has not reviewed this bill. The bill may require some additional local government expenditures related to issuance of procurement requests, but that provision might improve certain local government revenue collections. The law enforcement special assessment provision will likely have an indeterminate impact on municipal revenues because levy of the authorized assessment is optional. By design, the bill is expected to have minimal net revenue impacts on any municipality that chooses to levy the new assessment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Government Finance Background

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.[1] However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[2] Non-charter county governments are granted powers of self-government pursuant to general or special law,[3] and charter counties are granted all powers of self-government that do not conflict with general or special law.[4] Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida statutes that authorize specific types of fees.[5]

Law Enforcement Special Assessment (Section 1 of the bill)

Current Situation

Special Assessments – Generally

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit to real property. Examples of special assessments include fees for garbage disposal,[6] sewer improvements,[7] fire protection services,[8] and stormwater management services,[9] but do not include emergency medical services,[10] general law enforcement activities, the provision of courts, or indigent health care.[11] Counties and municipalities have the authority to levy special assessments based on their home rule powers.[12] Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment: (1) the property assessed must derive a special benefit from the service provided (the special benefit test), and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit (the apportionment test).[13]

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[1] Fla. Const. art. VII, §§ 1(a) and 9(a).
[2] Fla. Const. art. VIII, §2(b). *See also* s. 166.021, F.S.
[3] Fla. Const. art. VIII, §1(f). *See also* ch. 125, F.S.
[4] Fla. Const. art. VIII, §1(g).
[5] The Florida Legislature's Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Dec. 2014).
[6] *Harris v. Wilson*, 693 So.2d 945 (Fla. 1997); *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667 (Fla. 1997).
[7] *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970).
[8] *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002); *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667 (Fla. 1997); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So.2d 380 (Fla. 1973); *Fire Dist. No. 1 v. Jenkins*, 221 So.2d 740 (Fla. 1969).
[9] *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So.2d 180 (Fla. 1996).
[10] *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002); s. 401.107(3), F.S., defines "emergency medical services" as the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.
[11] *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667 (Fla. 1997).
[12] *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).
[13] *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla. 1992); *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667 (Fla. 1997).

Chapter 125, F.S., allows counties to establish municipal service taxing or benefit units for any part or all of the county's unincorporated area in order to provide a number of county or municipal services. Such services can be funded, in whole or in part, from special assessments.[14] To the extent not inconsistent with general or special law, counties may also create special districts to include both incorporated and unincorporated areas, upon the approval of the affected municipality's governing body, which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.[15]

Section 197.3632, F.S., Procedure to Create a Non-Ad Valorem Assessment

Special assessments are commonly collected on the annual ad valorem tax bills, characterized as a "non-ad valorem assessments" under the statutory procedures in ch. 197, F.S.[16] Section 197.3632(1)(d), F.S., defines a non-ad valorem assessment as those assessments that are not based upon millage and which can become a lien against a homestead as permitted in article X, section 4 of the Florida Constitution.[17]

A municipality that is authorized to impose a non-ad valorem assessment and elects to use the uniform method of collecting the assessment for the first time as authorized by s. 197.3632, F.S.,[18] must adopt a resolution at a public hearing prior to January 1 or, if the property appraiser, tax collector, and local government agree, March 1.[19] The resolution must clearly state its intent to use the uniform method of collecting the assessment.[20] The municipality must publish notice of its intent to use the uniform method for collecting such assessment weekly in a newspaper of general circulation within that county for four consecutive weeks preceding the hearing.[21] The resolution must state the need for the levy[22] and a legal description of the boundaries of the real property subject to the levy.[23] If the resolution is adopted, the local governing board must send a copy of it by United States mail to the property appraiser, the tax collector, and the Department of Revenue (DOR) by January 10 or, if the property appraiser, tax collector, and local government agree, March 10.[24]

In addition, s. 197.3632(4)(a), F.S., requires a municipality levying a non-ad valorem assessment for the first time to adopt the non-ad valorem assessment roll[25] at a public hearing between January 1 and September 15. At least 20 days prior to the public hearing, the municipality must notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within that county.[26] The notice by mail must be sent to each person owning property subject to the assessment.[27] However, notice by mail is not required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days before the hearing on adoption of the new non-ad valorem assessment roll.[28] At the public hearing, the local governing board must receive the written objections and hear testimony from all interested persons.[29] If the local governing board adopts the non-ad

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[14] s. 125.01(1)(q)-(r), F.S.
[15] s. 125.01(5), F.S.
[16] Nabors, Giblin and Nickerson, *Primer on Home Rule & Local Government Revenue Sources*, at 35 (June 2008).
[17] Article X, section 4(a) of the Florida Constitution, provides, in pertinent part that "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon ..."
[18] s. 197.3632, F.S., provides for the uniform method for the levy, collection, and enforcement on non-ad valorem assessments.
[19] s. 197.3632(3)(a), F.S.
[20] *Id.*
[21] *Id.*
[22] s. 197.3632(1)(a), F.S., defines "levy" as the imposition of a non-ad valorem assessment, stated in terms of rates, against all appropriately located property by a governmental body authorized to impose non-ad valorem assessments.
[23] *Id.*
[24] *Id.*
[25] s. 197.3632(1)(e), F.S., defines "non-ad valorem assessment roll" as the roll prepared by a local government and certified by the tax collector for collection.
[26] s. 197.3632(4)(b), F.S.
[27] *Id.*
[28] *Id.*
[29] s. 197.3632(4)(c), F.S.

valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of the assessment.[30] By September 15 of each year, the chair of the local governing board must certify the non-ad valorem assessment roll to the tax collector.[31]

Supplemental Method of Making Local Improvements

In addition to a municipality's authority to impose special assessments under its home rule powers, ch. 170, F.S., provides a supplemental and alternative method for making municipal improvements. Specifically, s. 170.201(1), F.S., provides that the governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services,[32] garbage disposal, sewer improvement, street improvement and parking facilities. The governing body of a municipality may apportion costs of the special assessment on:

- The front or square footage of each parcel of land; or
- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.[33]

Although subsection (1) of s. 170.201, F.S., does not explicitly list law enforcement services, the language "including, but not limited to" indicates that this is not an exclusive list.[34]

Special Assessments for Law Enforcement Services

However, in 1998, the Attorney General's Office issued Opinion 98-57, stating that "the imposition of special assessments to fund general law enforcement would not appear to be permissible in light of the decision of the Supreme Court of Florida in *Lake County v. Water Oak Management Corporation*."[35] In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire protection services provided by the county on the grounds that there was no special benefit to the properties on which the fire protection special assessment was imposed, therefore, failed the special benefit test.

On appeal, the Florida Supreme Court stated that in determining whether a special benefit is conferred on real property by the services, "the test is not whether the services confer a 'unique' benefit or are different in type or degree from the benefit provided to the community as a whole; rather the test is whether there is a 'logical relationship' between the services provided and the benefit to real property."[36] The Court found that while fire protection services are generally available to the community as a whole, the greatest benefit is to owners of real property.[37] As previously concluded in a 1969 Florida Supreme Court decision, "fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property."[38] The Court further stated that:

> Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property. Thus, such services

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[30] *Id.*

[31] s. 197.3632(5)(a), F.S.

[32] *But see City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002) (the City's special assessment for an integrated fire rescue program for fire suppression and first-response medical aid was valid, but was not valid for emergency medical services).

[33] s. 170.201(1), F.S.

[34] *Argosy Ltd. v. Hennigan*, 404 F.2d 14 (5th Cir. 1968); Op. Atty. Gen. Fla. 84-45 (1984).

[35] Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998), available at http://www.myfloridalegal.com/ago.nsf/Opinions/AE443DFD94CCF97D85256683006867D2 (last visited Feb. 18, 2106); *citing Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667 (Fla. 1997).

[36] *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667, 669 (*citing Whisnant v. Stringfellow*, 50 So.2d 885 (Fla. 1951); *Crowder v. Phillips*, 146 Fla. 440, 1 So.2d 629 (1941)).

[37] *Lake County*, 695 So.2d 669.

[38] *Lake County*, 695 So.2d 669 (*citing Fire Dist. No. 1 v. Jenkins*, 221 So.2d 740, 741 (Fla. 1969)).

> cannot be the subject of a special assessment because there is no logical relationship between services provided and the benefit to real property.[39]

In 2005, the First District Court of Appeal held that special assessments for law enforcement services on certain leaseholds were a valid special assessment.[40] In that case, the leaseholds subject to the special assessment were not subject to ad valorem taxation, and were located on an island with "unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property."[41] For these reasons, the court held that the "unique nature and needs of the subject leaseholds" made the special assessments valid.[42]

Based on these court decisions, it would appear that, absent a unique benefit to real property provided by law enforcement services, local governments may not levy special assessments for general law enforcement services.

Proposed Changes

Section 1 of the bill authorizes a municipality to levy a law enforcement services special assessment to fund the costs of providing law enforcement services if the municipality:

- Apportions the costs of law enforcement services among parcels of real property in reasonable proportion to the benefit received by each parcel;
- Levies ad valorem taxes in the fiscal year immediately preceding the fiscal year in which the special assessment is first collected;
- Reduces the municipal ad valorem taxes for the first year the municipality levies the special assessment by an amount sufficient to offset the additional revenues from the assessment;
- Levies and collects the special assessment under the uniform method for levying and collecting non-ad valorem assessments in s. 197.3632, F.S; and
- Does not adopt an ad valorem millage rate in the future that exceeds the rate set in the initial year of the assessment.

While the bill refers to the new levy as a "special assessment," the bill explicitly states that the levy of the law enforcement services special assessment must be construed as being authorized by general law under ss. 1 and 9, Art. VII, of the State Constitution. Those constitutional provisions authorize local governments to levy ad valorem and other taxes if authorized by general law enacted by the Legislature. Therefore, the "special assessment" authorized by this bill must be considered a new tax authorized by general law, rather than a special assessment.

Apportionment Methodology

Section 1 of the bill also provides that the municipality must have an apportionment methodology that allocates the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives. The apportionment may consider the following factors:

- The size of structures on the parcel;
- The location and use of the parcel;
- The projected amount of time that the municipal law enforcement agency will spend serving, and protecting the parcel, grouped by neighborhood, zone, or category of use, which may include the projected amount of time that will be spent responding to calls for law enforcement services and the projected amount of time law enforcement officers will spend patrolling or regulating traffic on the streets that provide access to the parcel; and

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[39] *Lake County*, 695 So.2d 670; Similarly, the Court, in *City of North Lauderdale*, held that emergency medical services did not provide any special benefit to property, reasoning that "[a]lthough emergency medical services may provide a sense of security to individuals, neither the service nor the sense of security is provided to the property itself. *City of North Lauderdale*, 825 So.2d 350.

[40] *Quietwater Entertainment, Inc. v. Escambia County*, 890 So.2d 525 (Fla. 1st DCA 2005).

[41] *Quietwater Entertainment, Inc.*, 890 So.2d 527.

[42] *Id.*

- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of real property.

Ad Valorem Reduction Requirements

Further, section 1 of the bill provides that the municipality must reduce its ad valorem millage as follows:

- In the first year the municipality levies the special assessment, the municipality must reduce its ad valorem millage, calculated as if there were no law enforcement services special assessment, by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment;
- When preparing notice of proposed property taxes[43] in the first year of the assessment, the municipality must calculate the rolled-back millage rate[44] and determine the preliminary proposed millage rate as if there were no law enforcement services special assessment. The governing body must then adopt the proposed law enforcement services special assessment and determine the equivalent millage rate. The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services assessment equivalent millage rate and the resulting millage rate reported to the property appraiser, together with the amount of the special assessment, pursuant to notice requirements of ss. 200.065, and 200.069, F.S.;
- The property appraiser must list the special assessment on the notice of proposed property taxes as a non-ad valorem assessment;
- After the first year of the assessment, the municipality's governing body will calculate the millage rate and rolled-back rate for the notice of proposed property taxes, and must be based on the adopted millage rate from the previous year; and
- The special assessment revenues cannot be greater than an amount that would result in a proposed millage rate of zero for the first year of the assessment.

The bill provides that a municipality's authority to levy the special assessment is terminated beginning in any fiscal year for which the municipality's final adopted millage rate exceeds the proposed millage rate for the first year of the assessment.

The bill authorizes DOR to adopt rules and forms necessary to administer s. 166.225, F.S.

Capital Recovery – Uncollected Municipal Revenue Sources (Sections 2 and 3 of the bill)

Current Situation

Municipal Code Enforcement & Other Fees & Fines

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, F.S., outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce a municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.[45] Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.[46] However, local governments are not prevented by statute from enforcing codes and ordinances by any other means.[47]

Municipally Owned Utilities

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint

[43] Pursuant to s. 200.069, F.S., notice of proposed property taxes and non-ad valorem assessments.
[44] Pursuant to s. 200.065(5), F.S., method of mixing millage.
[45] s. 162.21, F.S.
[46] s. 162.09, F.S.
[47] s. 162.21, F.S.

ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."[48] Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.[49] With respect to public works projects, including water and sewer utility services,[50] municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, F.S.[51] Current law requires municipalities providing telecommunication services to abide by certain requirements.[52] Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).[53] PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.[54] PSC regulation of municipal natural gas utilities is limited to territorial issues.[55] Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.[56]

Uncollected Fees & Fines

Many fees and fines imposed by counties and municipalities are difficult to collect in a timely manner. However, because municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a municipality can have a large balance of uncollected fees and fines. In a survey of large cities in Florida performed by a private company in 2013, seven cities reported a total of $421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens.[57]

Collection Agencies

Municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.[58] When done on a contingency basis, fees paid to the collection agency may not exceed 40 percent of the amount originally owed to the municipality.

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.[59] As of June 30, 2015, there were 1,365 registered collection agencies in Florida.[60]

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[48] Fla. Const. art. VII, s. 10(d). *See* ss. 361.10-361.18, F.S.

[49] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

[50] s. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

[51] s. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. See s. 180.19, F.S.

[52] *See* s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

[53] *See* s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

[54] ss. 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 02/5/2016).

[55] s. 366.04(3), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 02/5/2016).

[56] s. 367.022(2), F.S.

[57] On file with the State Affairs Committee.

[58] s. 938.35, F.S.

[59] s. 559.555, F.S.

[60] Telephone conversation with OFR (October 29, 2015).

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act[61] and the Florida Consumer Collection Practices Act.[62] Both acts define "debt collector" narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney's fees and costs.

Annual Financial Audit Report

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.[63] The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.[64] AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and is useful for detailed financial analysis.

Proposed Changes

Section 2 of the bill creates s. 166.30, F.S., relating to municipal capital recovery. The bill defines certain revenue sources, including:

- Abatement fines, which are amounts billed to an owner of real property by a municipality to recover funds expended by the municipality to bring the property into compliance with a municipal ordinance by taking some action at the property, regardless of whether a lien was attached to the property related to the fine;
- Administrative fines, which are amounts, other than abatement or property fines, billed to an individual for the violation of a municipal ordinance or code unrelated to real property;
- Property fines, which are amounts, other than abatement fines, that are billed to a property owner due to the property being out of compliance with an ordinance or code, regardless of whether a lien was attached to the property related to the fine; and
- Utility charges, which are amounts billed to a customer, other than a governmental entity,[65] by a municipally-owned utility for providing utility service.

These revenue sources are collectively defined as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposals issued pursuant to a municipality's procurement policy. The bill defines "delinquent" as amounts unpaid after the due date listed on the original bill of designated revenues, regardless of whether the municipality has contracted with a collection agency pursuant to s. 938.35, F.S.[66] for collection.

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[61] 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

[62] Part VI of Chapter 559, F.S.

[63] Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

[64] ss. 218.32(1)(d)-(e), F.S.

[65] As defined in s. 768.295, F.S., which provides that a "governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

[66] s. 938.35, F.S., provides for the collection of court-related financial obligations.

Section 2 of the bill also provides that, beginning October 1, 2016, any municipality that meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The municipality must seek bids from registered consumer collection agencies.[67] The criteria are:

- The sum of the municipality's designated revenues that are more than 90 days delinquent is at least $10 million;
- The sum of the municipality's designated revenues that are more than 180 days delinquent is at least $5 million; or
- The sum of the municipality's designated revenues that are more than 270 days delinquent is at least $1 million.

If a municipality issues a procurement request, it must reevaluate the amount of its delinquent designated revenues one year after making the request, exclusive of any delinquent designated revenues that a collection agency has contracted to collect in response to the procurement request. If, at that time, the municipality continues to meet any of the three criteria, it must issue an additional procurement request.

If the municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous year it is not required to issue a procurement request.

A municipality is not required to enter into a contractual relationship with any consumer collection agency responding to a procurement request, and may continue to collect delinquent designated revenues by any method allowed by law.

Any municipality issuing a procurement request pursuant to this provision is required to file a copy of all responses to the procurement request with DFS. DFS must maintain a copy of all such bids for a period of at least 5 years.

Section 3 of the bill requires all municipalities to include, as part of the management letter submitted with the annual financial audit report, a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues.

B. SECTION DIRECTORY:

Section 1. Creates section 166.225, F.S., to allow a municipal law enforcement special assessment.

Section 2. Creates section 166.30, F.S., specifying the requirements for municipal capital recovery.

Section 3. Amends section 218.39, F.S. to require a discussion of capital recovery as part of the management letter accompanying the annual financial auditing report.

Section 4. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

[67] The consumer collection agencies must be registered pursuant to s. 559.553, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See FISCAL COMMENTS below.

2. Expenditures: The bill may, in certain circumstances, require an expenditure of funds by a municipality to issue a procurement request.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Individuals that reside in municipalities that levy special assessments for law enforcement services as provided in this bill may be required to pay such special assessments for the law enforcement services they receive, which may or may not be fully offset by property tax reductions required by the bill, depending on each taxpayer's ad valorem tax circumstances.

D. FISCAL COMMENTS: The bill may result in improved revenue collections if it encourages additional local government revenue collection efforts.

The law enforcement special assessment provision will likely have an indeterminate impact on municipal revenues because levy of the authorized assessment is optional. By design, the bill is expected to have minimal net revenue impacts on any municipality that chooses to levy the new assessment.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities, in some circumstances, to issue a procurement request, which may require the expenditure of funds; however, an exemption may apply, as the expenditure of funds to issue an invitation to bid is most likely insignificant.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill provides authorization for the DOR to adopt rules and forms necessary to administer provisions of this bill related to the law enforcement special assessment.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR Comments:

The bill does not provide a deadline for municipalities to pass a resolution to levy the law enforcement service assessment. The statutory deadlines in the bill would make it difficult to collect the assessment and make the proper adjustments to the millage rate if a municipality passed a resolution during the later stages of the Truth in Millage (TRIM) process. Implementing any law enforcement assessments in 2016 would be difficult because the annual TRIM process will be underway by the bill's July 1, 2016, effective date.

In addition, before a municipality could implement the assessment and change the millage rate, DOR will need to promulgate at least one new form and make changes to the eTRIM system's programming. The short deadline for programming information systems to include the new assessment, testing, etc., would compound these problems.

DOR suggests establishing a specific deadline, such as April 1, for a taxing authority to pass a non-ad valorem resolution to levy this assessment. The TRIM process begins June 1, with the property appraiser giving the taxing authority an estimate of value.

The bill does not state the consequences if the taxing authority does not calculate the rolled-back rate by reducing the amount of law enforcement services. Lines 75 through 80 are confusing because they state that the TRIM notice will show a rolled-back rate calculated under s. 200.065(5), F.S. That statute refers to calculating a rolled-back rate for maximum millage and the voting requirements the taxing authority's governing body must meet to levy a millage rate. Form DR-420 (Certification of Taxable Value) has the rolled-back rate that appears on the TRIM notice.

DOR further suggests that, because the taxing authorities would have severe difficulties in meeting the statutory deadlines that the bill creates if applied to the 2016 tax year, the changes should first be applied to the 2017 tax year.[68]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Finance & Tax Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute added sections 2 and 3 to the bill, regarding municipal capital recovery and reporting requirements.

This analysis is drafted to the committee substitute as approved by the Finance & Tax Committee.

[68] DOR's analysis of HB 789 (2016), on file with the State Affairs Committee.

A bill to be entitled

An act relating to local government finance; creating s. 166.225, F.S.; authorizing a municipality to levy a special assessment to fund the costs of providing law enforcement services if certain criteria are met; providing a methodology for apportionment of the special assessment and reduction of ad valorem millage; requiring the property appraiser to list the special assessment on the notice of property taxes; providing for termination of a municipality's authority to levy the special assessment under certain circumstances; authorizing the Department of Revenue to adopt rules and forms; providing for construction; creating s. 166.30, F.S.; providing definitions; requiring municipalities that meet certain thresholds for specified delinquent revenues to issue a procurement request to collect such revenues; requiring procurement requests to be sent to consumer collection agencies; providing that municipalities issuing procurement requests are not required to enter into a contract; excluding certain delinquent revenues from threshold calculations under certain circumstances; requiring that copies of all bids received be filed with the Department of Financial Services; amending s. 218.39, F.S.; requiring that a discussion of capital recovery efforts be included in

the management letter accompanying a municipality's annual financial audit report; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 166.225, Florida Statutes, is created to read:

166.225 Law enforcement services special assessment.—

(1) GENERAL.—The governing body of a municipality may levy a law enforcement services special assessment to fund all or a portion of its costs of providing law enforcement services, if the governing body:

(a) Apportions the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit received by each parcel;

(b) Levies ad valorem taxes for the fiscal year immediately preceding the fiscal year in which the law enforcement services special assessment is first collected;

(c) Reduces its ad valorem millage pursuant to subsection (3); and

(d) Levies and collects the law enforcement services special assessment pursuant to s. 197.3632.

(2) APPORTIONMENT METHODOLOGY.—The methodology used to determine the benefit that a parcel of real property derives from law enforcement services may be based on the following:

(a) The square footage of structures on the parcel.

(b) The location of the parcel.

(c) The use of the parcel.

(d) The projected amount of time the municipal law enforcement agency will spend serving and protecting the parcel, grouped by neighborhood, zone, or category of use, which may include the projected amount of time that will be spent responding to calls for law enforcement services and the projected amount of time law enforcement officers will spend patrolling or regulating traffic on the streets that provide access to the parcel.

(e) Any other factor that may reasonably be used to determine the benefit of law enforcement services to a parcel of real property.

(3) REDUCTION IN AD VALOREM MILLAGE.—

(a) In the first year in which the law enforcement services special assessment is levied, the governing body of the municipality must reduce its ad valorem millage, calculated as if there were no law enforcement services special assessment, by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.

(b) When preparing the notice of proposed property taxes pursuant to s. 200.069 in the first year of the assessment, the governing body of the municipality shall calculate the rolled-back millage rate pursuant to s. 200.065(5) and shall determine

the preliminary proposed millage rate as if there were no law enforcement services special assessment. The governing body shall then adopt the proposed law enforcement services special assessment and determine the equivalent millage rate pursuant to paragraph (a). The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services special assessment equivalent millage rate and the resulting millage rate reported to the property appraiser, together with the amount of the law enforcement services special assessment, pursuant to the notice requirements of ss. 200.065 and 200.069. The property appraiser shall list the law enforcement services special assessment on the notice of proposed property taxes below the line in the columns reserved for non-ad valorem assessments. After the first year of the assessment, the millage rate and rolled-back rate for the notice of proposed property taxes shall be calculated pursuant to s. 200.065(5) and must be based on the adopted millage rate from the previous year.

(c) The law enforcement services special assessment revenues may not be greater than an amount that would result in a proposed millage rate of zero for the first year of the assessment reported to the property appraiser under paragraph (b).

(4) TERMINATION OF AUTHORITY.—A municipality's authority to levy the law enforcement services special assessment terminates beginning in any fiscal year for which the municipality's final adopted millage rate exceeds the proposed

millage rate for the first year of the assessment reported to the property appraiser under paragraph (3)(b).

(5) RULES AND FORMS.—The Department of Revenue may adopt rules and forms necessary to administer this section.

(6) CONSTRUCTION.—The levy of a law enforcement services special assessment pursuant to this section shall be construed as being authorized by general law in accordance with ss. 1 and 9, Art. VII of the State Constitution.

Section 2. Section 166.30, Florida Statutes, is created to read:

166.30 Municipal capital recovery.—

(1) As used in this section, the term:

(a) "Abatement fine" means an amount billed to an owner of real property by a municipality after the municipality brings such real property or a portion thereof into compliance with a municipal ordinance or code by removing, repairing, rehabilitating, demolishing, improving, remediating, storing, transporting, or disposing of any portion of the real property or any tangible personal property located thereon, regardless of whether a lien was attached to the property related to such fine.

(b) "Administrative fine" means an amount billed to an individual for a violation of a municipal ordinance or code unrelated to real property.

(c) "Delinquent" means unpaid after the due date listed on the original billing of an abatement fine, administrative fine,

property fine, or utility charge, regardless of whether the municipality has contracted with a collection agency pursuant to s. 938.35 for the collection of the unpaid fines or charges.

(d) "Designated revenues" means abatement fines, administrative fines, property fines, and utility charges.

(e) "Procurement request" means an invitation to bid, an invitation to negotiate, or a request for proposals issued by a municipality pursuant to its procurement policies.

(f) "Property fine" means an amount, other than an abatement fine, billed to a property owner due to the property owner's property being out of compliance with a municipal ordinance or code, regardless of whether a lien was attached to the property related to such fine.

(g) "Utility charge" means an amount billed to a customer, other than a government entity as defined in s. 768.295, by a municipally owned utility for providing utility service.

(2) Beginning October 1, 2016, a municipality shall issue a procurement request meeting the requirements of subsection (4) if the municipality has designated revenues totaling at least:

(a) Ten million dollars which are more than 90 days delinquent;

(b) Five million dollars which are more than 180 days delinquent; or

(c) One million dollars which are more than 270 days delinquent.

(3) A municipality that meets at least one of the criteria in subsection (2) 1 year after issuing a procurement request pursuant to this section must issue an additional procurement request meeting the requirements of subsection (4).

(4) A procurement request issued pursuant to this section must be issued no later than 30 days after the criteria set forth in subsection (2) or subsection (3) are met and must seek bids from consumer collection agencies registered pursuant to s. 559.553.

(5) Subsections (2) and (3) do not apply to a municipality the delinquent designated revenues of which are less than 20 percent of the total designated revenues billed by the municipality in the previous 12 months.

(6) A municipality is not required to enter into a contract for services with any consumer collection agency that responds to the procurement request.

(7) Any delinquent designated revenues that a consumer collection agency has contracted to collect in response to a procurement request issued pursuant to this section shall be excluded from the calculation made by the municipality when determining whether any of the criteria in subsection (2) are met.

(8) The municipality shall forward a copy of all bids it has received in response to any procurement request issued pursuant to this section to the Department of Financial Services. The Department of Financial Services shall keep all of

the bids on file for at least 5 years.

Section 3. Subsection (4) of section 218.39, Florida Statutes, is amended to read:

218.39 Annual financial audit reports.—

(4) A management letter shall be prepared and included as a part of each financial audit report. For each municipal financial audit report, the letter must include a discussion of the current balance of the municipality's delinquent designated revenues as defined in s. 166.30 and the efforts the municipality has undertaken to collect such revenues.

Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 789 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Pilon offered the following:

Amendment

Remove lines 46-49 and insert:

(c) Reduces its ad valorem millage pursuant to subsection (4);

(d) Does not expend ad valorem tax revenues on law enforcement services after the law enforcement services special assessment is levied; and

(e) Levies and collects the law enforcement services special assessment pursuant to s. 197.3632.

(2) Before a municipality may levy a law enforcement services special assessment pursuant to this section, the special assessment must be approved by a majority of electors residing within the municipality voting in a referendum held during a general election.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 795 Dredge and Fill Activities
SPONSOR(S): Edwards
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Helpling	Massengale
3) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

Under Section 10 of the Rivers and Harbors Act of 1899, the United States Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions or alterations of any navigable water of the U.S., the construction of any structures in or over any navigable water of the U.S., and any work affecting the course, location, condition, or capacity of navigable waters of the U.S. Under Section 404 of the Clean Water Act, the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the U.S. Under these authorizations, the Corps has authority to issue general permits on a statewide, regional, or nationwide basis for specific categories of work. However, a state may seek to administer a general permit for categories of work by applying to the Corps. If approved, the Corps will suspend its issuance of permits and the administration and enforcement of activities with respect to the activities authorized under the general permit to the state. A state may also seek assumption of the Clean Water Act to regulate the discharge of dredged or fill material into certain waters.

The Legislature has specified that it is the policy of the state to provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting regarding wetlands and navigable waters within the state. The Legislature has authorized the Department of Environmental Protection (DEP) and water management districts (WMDs) to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps. The Legislature has also authorized DEP to pursue assumption of federal permitting programs regulating the discharge of dredged or fill material under the Clean Water Act.

The bill increases the acreage of wetland or other surface water impacts, including navigable waters, DEP or WMDs are authorized to implement through a SPGP, subject to agreement with the Corp, from 3 acres or less to 10 acres of less. The bill provides that by seeking to use a SPGP, an applicant consents to applicable federal wetland jurisdiction criteria and for the limited purpose of implementing the SPGP.

In addition, the bill allows DEP to seek delegation of, in addition to assumption of, federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act and the Rivers and Harbors Act, so long as the delegation encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill appears to have an insignificant fiscal impact on the state, a potential positive fiscal impact on the private sector, and no fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rivers and Harbors Act of 1899 and the Clean Water Act

Under Section 10 of the Rivers and Harbors Act of 1899, the United States Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions or alterations of any navigable water of the U.S., the construction of any structures in or over any navigable water of the U.S., and any work affecting the course, location, condition, or capacity of navigable waters of the U.S.[1] Under Section 404 of the Clean Water Act, the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the U.S.[2]

General Permits

Under these authorizations, the Corps has authority to issue general permits on a statewide, regional, or nationwide basis for specific categories of work.[3] General permits issued for activities involving discharges of dredged or fill material are authorized if:

- The category of activity is similar in nature;
- Will cause only minimal adverse impacts of the environment individually; and
- Will have only minimal cumulative adverse impacts on the environment.[4]

General permits are in effect for no more than five years. They may be revoked or modified if they are determined to have an adverse impact on the environment or are more appropriately authorized by individual permits.[5]

The Corps, Jacksonville District, administers the following general permits in Florida:

- SAJ-5, 4/5/2013 - 4/5/2018 Maintenance Dredging in Residential Canals;
- SAJ-13, 12/20/2013 -12/20/2018 Aerial Transmission Lines;
- SAJ-14, 12/20/2013 - 12/20/2018 Sub-aqueous Utility and Transmission Lines;
- SAJ-17, 4/08/2013 - 4/08/2018 Minor Structures;
- SAJ-20, 3/22/2013 - 3/22/2018 Private Single-Family Piers;
- SAJ-33, 4/08/2013 - 4/08/2018 Private Multi-Family or Government Piers;
- SAJ-34, 4/08/2013 - 4/08/2018 Private Commercial Piers;
- SAJ-72, 6/21/2013 - 6/21/2018 Residential Docks in Citrus County;
- SAJ-46, 3/21/2013 - 3/21/2018 Bulkheads and Backfill in Residential Canals;
- SAJ-82, 9/10/2014 - 9/10/2019 Single family residence projects including: lot fills, minor structures, riprap revetments, marginal docks, bulkheads and backfill in residential canals in Monroe County;
- SAJ-86, 3/25/2015 - 3/25/2020: Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties;
- SAJ-90, 4/05/2011 - 4/05/2016: Residential, Commercial & Institutional Developments in Northeast Florida;

[1] 33 U.S.C. §403.
[2] 33 U.S.C. §1344.
[3] 33 U.S.C. §403 and §1344.
[4] 33 U.S.C. §1344(e)(1).
[5] 33 U.S.C. §1344(e)(2).

- SAJ-92, 4/08/2015 - 4/08/2020: Improvements to existing Florida Department of Transportation or Florida's Turnpike Enterprise roadways, excluding Monroe County;
- SAJ-93, 2/16/2011- 2/16/2016: Maintenance dredging activities for the Atlantic Intracoastal Waterway, the Intracoastal Waterway, and the Okeechobee Waterway within the Florida Inland Navigation - East Coast;
- SAJ-103, 10/08/2010 - 10/08/2015: Residential Fill in Holley By The Sea, a Subdivision in Santa Rosa County;
- SAJ-105, 11/12/2015 - 11/12/2020: Residential, Commercial, Recreational and Institutional Fill in the West Bay Watershed of Bay County; and
- SAJ-106, 2/14/2012 - 2/14/2017: Water Management services on ranchlands located within the Northern Everglades and Estuaries Region of Florida.[6]

A state desiring to administer a general permit may submit to the Corps a description of the program the state proposes to establish and administer under state law. The state must also submit a statement from the attorney general providing that the laws of the state provide adequate authority to carry out the program.[7] If the state's program is approved, the Corps will suspend its issuance of permits and the administration and enforcement of activities with respect to the activities authorized under the general permit to the state.[8]

State Programmatic General Permit

The Legislature has specified that it is the policy of the state to provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting regarding wetlands[9] and navigable waters within the state.[10] It is the Legislature's intent, with regard to federal environmental permitting, to:

- Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection (DEP), water management districts (WMDs),[11] the Corps, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies;
- Authorize DEP to obtain issuance by the Corps of an expanded state programmatic general permit (SPGP), or a series of regional general permits, for categories of activities in waters of the U.S. governed by the Clean Water Act, and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment;
- Use the mechanism of a SPGP or regional general permit to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the Corps and DEP for minor work located in waters of the U.S., including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the Corps while ensuring the most stringent protection of wetland resources; and

[6] Corps, Jacksonville District, available at http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx, last visited (Jan. 29, 2016).
[7] 33 U.S.C. §1344(g)(1).
[8] 33 U.S.C. §1344(h).
[9] Section 373.019(27), F.S., defines "wetlands" as areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto; *See also* Section 373.421, F.S.
[10] Section 373.4143, F.S.
[11] Section 373.4145,(1)(c), F.S., provides that this includes the Northwest Florida WMD.

- Direct DEP to not issue or take action on a permit unless the conditions are at least as protective of the environment and natural resources as existing state and federal law.[12]

The Legislature has authorized DEP and WMDs to implement a voluntary SPGP for all dredge[13] and fill[14] activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law and federal law.[15]

DEP is also authorized to pursue a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act, and the Rivers and Harbors Act, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.[16]

SPGP IV-R1

The state has been authorized by the Corps to implement a SPGP since the 1990s.[17] In July 2011, the Corps issued a revised SPGP (SPGP IV-R1) to the state that authorizes DEP, a WMD,[18] or a local government with delegated authority[19] to issue a permit on behalf of the Corps for certain types of projects with relatively minor impacts to wetlands or surface waters.[20] The SPGP IV-R1 expanded the state's geographic coverage to include the counties in the panhandle area, the area encompassed by the Northwest Florida WMD. The SPGP IV-R1 now encompasses the entire state, except for Monroe County, and the locations listed in Special Condition 5.[21]

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[12] Section 373.4144(1)(a)-(d), F.S.

[13] Section 373.403(13), F.S., defines "dredging" as excavation, by any means, in surface waters or wetlands. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, directly or via an excavated water body or series of water bodies.

[14] Section 373.403(14), F.S., defines "filling" as the deposition, by any means, of materials in surface waters or wetlands.

[15] Section 373.4144(2), F.S.

[16] Section 373.4144(3), F.S.

[17] *DEP's Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759(Chapter2005-273, Laws of Florida)* (Sept. 30, 2005), on file with the Agriculture & Natural Resources Subcommittee; DEP State Programmatic General Permit, available at http://www.dep.state.fl.us/water/wetlands/erp/spgp.htm., last visited (Jan. 29, 2016); The SPGP has gone through several iterations: SPGP I, SPGP II, SPGP III, SPGP III-R1, and SPGP IV.

[18] In December 2013, the St. Johns River WMD entered into a coordination agreement with the Corps that allowed the WMD to issue permits on behalf of the Corps under the SPGP IV-RI.

[19] *See* Section 373.441, F.S.

[20] SPGP IV-R1, available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.; DEP's Coordination Agreement with the Corps, available at http://www.dep.state.fl.us/water/wetlands/forms/spgp/SPGP_IV_Cooperative_Agreement.pdf.

[21] Special Condition 5 of the SPGP IV-R1 provides that is not applicable in the geographical boundaries of: Monroe County; the Timucuan Ecological and Historical Preserve (Duval County); the St. Mary's River, from its headwaters to its confluence with the Bells River; the Wekiva River from its confluence with the St. Johns River to Wekiwa Springs, Rock Springs Run from its headwaters at Rock Springs to the confluence with the Wekiwa Springs Run, Black Water Creek from the outflow from Lake Norris to the confluence with the Wekiva River; canals at Garfield Point including Queens Cove (St. Lucie County); the Loxahatchee River from Riverbend Park downstream to Jonathan Dickinson State Park; the St. Lucie Impoundment (Martin County); all areas regulated under the Lake Okeechobee and Okeechobee Waterway Shoreline Management Plan, located between St. Lucie Lock (Martin County) and W.P. Franklin Lock (Lee County); American Crocodile designated critical habitat (Miami-Dade and Monroe Counties); Johnson's seagrass designated critical habitat (southeast Florida); piping plover designated critical habitat (throughout Florida); acroporid coral designated critical habitat (southeast Florida); Anastasia Island, Southeastern, Perdido Key, Choctawhatchee, or St. Andrews beach mice habitat (Florida east coast and panhandle coasts); the Biscayne Bay National Park Protection Zone (Miami-Dade County); Harbor Isles (Pinellas County); the Faka Union Canal (Collier County); the Florida panther consultation area (Southwest Florida), the Tampa Bypass Canal (Hillsborough County); canals in the Kings Bay/Crystal River/Homosassa/Salt River system (Citrus County); Lake Miccosukee (Jefferson County).

The SPGP IV-R1 includes only the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas and structures associated with such ramps or launch areas;
- Docks, piers, associated facilities, and other minor piling supported structures; and
- Maintenance dredging of canals and channels, including removal of organic detrital material from freshwater lakes and rivers.[22]

Programmatic General Permit

Programmatic general permits are a type of general permit founded on an existing state, local or federal agency program that is designed to avoid duplication with that program.[23] The Corps has issued the following programmatic general permits in Florida that are administered by others:

- SAJ-42, Miami-Dade County, 4/29/2013 - 4/29/2018: Minor Activities in Miami-Dade County;
- SAJ-75, Palm Beach County, 5/01/2009 - 5/01/2014: Fill for residential Lots in Royal Palm Beach Subdivision;
- SAJ-80, Miccosukee Tribe, 8/09/2012 - 8/09/2017: Residential Fill - Miccosukee Tribe Reservation Lands;
- SAJ-83, Seminole Tribe of Florida, 3/15/2015 - 3/15/2020: Discharge of fill material for minor activities within the Big Cypress Seminole Indian Reservation;
- SAJ-87, Broward County, 12/14/2010 - 12/14/2015: Residential, Commercial & Institutional Fill in Plantation Acres;
- SAJ-91, City of Cape Coral, 2/28/2013 - 2/28/2018: Minor activities in the canal system of the city of Cape Coral;
- SAJ-96, Pinellas County, 7/17/2014 - 7/17/2019: Minor Activities in Pinellas County;
- SAJ-99, State of Florida, Department of Agriculture and Consumer Services, 11/09/2012 - 11/09/2017: Live Rock and Marine Bivalve Aquaculture; and
- SAJ-111, St. Johns River WMD, 10/31/2014 - 10/31/2019: Residential, Commercial & Institutional Developments in Northeast Florida.[24]

SAJ-111

In October 2014, the Corps issued a programmatic general permit to the St. Johns River WMD authorizing the issuance of a permit on behalf of the Corps for certain types of projects with relatively minor impacts to wetlands or surface waters (SAJ-111).[25] The SAJ-111 authorization is limited to residential, commercial or institutional projects in Northeast Florida with up to 3 acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over 20 years;
- Wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; and
- Wetlands covered by greater than 80 percent invasive or exotic vegetation.[26]

Assumption

A state may seek assumption of Section 404 of the Clean Water Act to regulate the discharge of dredged or fill material into certain waters.[27] The state program must regulate all discharges of dredged

[22] SPGP IV-R1, available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.
[23] Corps, Jacksonville District, available at http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx, last visited (Jan. 29, 2016).
[24] *Id.*
[25] SAJ-111, available at http://floridaswater.com/permitting/USACEfiles/SAJ-111_Permit_Instrument.pdf.
[26] *Id.*
[27] 40 C.F.R. §232.2(p); § 404(g)(1).

or fill material into waters regulated by the state; partial state programs are not approvable.[28] A state program may be more stringent and encompass a greater scope than required by federal law.[29] To apply, the state must submit to the U.S. Environmental Protection Agency at least three copies of the following:

- A letter from the Governor of the State requesting program approval;
- A complete program description;[30]
- An Attorney General's statement;[31]
- A Memorandum of Agreement with the Regional Administrator;[32]
- A Memorandum of Agreement with the Secretary;[33] and
- Copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures.[34]

Effect of Proposed Changes

The bill amends s. 373.4144, F.S., regarding federal environmental permitting, to increase the acreage of wetland or other surface water impacts, including navigable waters, the state is authorized to implement through a SPGP, subject to agreement with the Corp. The bill increases the acreage from 3 acres or less to 10 acres or less.

The bill provides that by seeking to use a SPGP, an applicant consents to applicable federal wetland jurisdiction criteria, which are authorized by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the Corps, notwithstanding s. 373.4145, F.S.,[35] and for the limited purpose of implementing the SPGP.

The bill allows DEP to seek delegation of, in addition to assumption of, federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act and the Rivers and Harbors Act, so long as the delegation encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4144(2), F.S., regarding federal environmental permitting.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[28] 40 C.F.R. §233.1(b).
[29] 40 C.F.R. § 233.1(c).
[30] 40 C.F.R. § 233.11.
[31] 40 C.F.R. § 233.12.
[32] 40 C.F.R. § 233.13.
[33] 40 C.F.R. § 233.14.
[34] 40 C.F.R. § 233.10.
[35] Section 373.4145, F.S., regards the environmental permitting program within the geographical jurisdiction of the Northwest Florida WMD.

2. Expenditures:

   Currently, the SPGP agreement between the Corps and DEP does not include a **3 acre**~~n acreage~~ threshold on wetlands impacts. If an agreement is reached to include a threshold of ten acres or less, the costs are expected to be minor and can be absorbed within existing agency resources.[36]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector if the bill results in the Corps issuing an expanded SPGP, or the state is granted assumption or delegation of the Clean Water Act. An expanded SPGP or assumption or delegation of the Clean Water Act would result in a reduction of duplicative permitting processes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[36] Email from Andrew Ketchel, Director of Legislative Affairs, Department of Environmental Protection, RE: HB795, (Feb. 5, 2016).

A bill to be entitled

An act relating to dredge and fill activities; amending s. 373.4144, F.S.; revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; authorizing the Department of Environmental Protection to delegate federal permitting programs for the discharge of dredged or fill material under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 373.4144, Florida Statutes, are amended to read:

373.4144 Federal environmental permitting.—

(2)(a) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 ~~3~~ acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

(b) By seeking to use a statewide programmatic general permit, an applicant consents to applicable federal wetland jurisdiction criteria, which are not included pursuant to this part, but which are authorized by the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the United States Army Corps of Engineers, notwithstanding s. 373.4145 and for the limited purpose of implementing the state programmatic general permit authorized by this subsection.

(3) The department may pursue ~~This section may not preclude the department from pursuing~~ a series of regional general permits for construction activities in wetlands or surface waters or delegation or ~~complete~~ assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the delegation or assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 795 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove lines 47-50 and insert:

Rivers and Harbors Act of 1899~~, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable water, within the state~~.

T I T L E A M E N D M E N T

Remove line 11 and insert:

fill material; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 953 Legislative Reauthorization of Agency Rulemaking Authority
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee; Eisnaugle and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N, As CS	Rubottom	Rubottom
2) Appropriations Committee	26 Y, 0 N	White	Leznoff
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

Agency rulemaking authority must be specifically authorized by law. Under Florida's Administrative Procedure Act (ch. 120, F.S.), rules must be supported by a law granting rulemaking authority to the agency and a specific law being implemented by the rule. A rule that is projected to have an economic or regulatory cost in excess of $1 million may not go into effect until ratified by the Legislature. Such ratifications occur by enacting a general law.

The bill suspends any rulemaking authorized by law three years after the effective date of the authority. Rulemaking authority in force upon the bill's effective date will be suspended on July 1, 2019, unless reauthorized. If rulemaking is not reauthorized by general law prior to the suspension, rulemaking authority is suspended until reauthorized. The bill makes exceptions for emergency rules and rules necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions.

The bill allows the Governor to issue a declaration of public necessity to delay any suspension for 90 days to allow the Legislature to convene and reauthorize necessary rulemaking. It also allows rulemaking proceedings to be conducted pursuant to ch. 120, F.S., while rulemaking authority is suspended, but delays the effect of any rules adopted during the suspension until the suspension ends.

There may be an indeterminate but likely insignificant fiscal impact to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Agency Rulemaking

Process and Ratification

Rulemaking is the executive application of constitutionally delegated legislative power to particularize public policy or regulate within guidelines set by the Legislature. The Florida Administrative Procedure Act (APA)[1] governs all rulemaking by state agencies except when specific legislation exempts its application.

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[2] Rulemaking authority is delegated by the Legislature[3] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[4] a rule. Agencies do not have discretion whether to engage in rulemaking.[5] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[6] The grant of rulemaking authority itself need not be detailed.[7] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[8]

A notice of rule development initiates public input on a rule proposal.[9] The process may be facilitated by conducting public workshops or engaging in negotiated rulemaking.[10] An agency begins formal rulemaking by filing a notice of the proposed rule.[11] The notice is published by the Department of State in the Florida Administrative Register[12] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared,[13] and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis of a rule's potential impact over the five-year period after the rule goes into effect. The analysis must show whether the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment;[14] is likely to have an adverse impact on business competitiveness,[15] productivity, or innovation;[16] or is likely to increase

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[1] Chapter 120, Florida Statutes.
[2] Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[3] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[4] Section 120.52(17).
[5] Section 120.54(1)(a), F.S.
[6] Section 120.52(8) & s. 120.536(1), F.S.
[7] *Save the Manatee Club, Inc.,* supra at 599.
[8] *Sloban v. Florida Board of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[9] Section 120.54(2)(a), F.S.
[10] Section 120.54(2)(c)-(d), F.S.
[11] Section 120.54(3)(a)1, F.S.
[12] Section 120.55(1)(b)2, F.S.
[13] Preparation of a SERC is required if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 within one year of implementation of the rule. Alternatively, preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented. Section 120.541(1)(a), (b), F.S.
[14] Section 120.541(2)(a)1., F.S.
[15] This includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

regulatory costs, including any transactional costs.[17] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the five-year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Current law distinguishes between a rule's being "adopted" and becoming enforceable or "effective."[18] A rule must be filed for adoption before it may go into effect[19] and cannot be filed for adoption until completion of the rulemaking process.[20] Because a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, the rule must be filed for adoption before being submitted for legislative ratification.

Proposed rules must also be formally reviewed by the Legislature's Joint Administrative Procedures Committee (JAPC),[21] which reviews rules to determine their validity, authority, sufficiency of form, consistency with legislative intent, reasonableness of regulatory cost estimates, and other matters.[22] An agency must formally respond to JAPC concerns or objections.[23]

There are presently tens of thousands of agency rules in force.[24] There are many hundreds of statutes authorizing rules.[25] Once rulemaking is authorized, the authority is perpetual unless and until the Legislature enacts a change in law. Agencies and boards have been known to repeatedly reject sound advice provided by JAPC when exceeding their delegated authority.[26] Altering any such authority that may have receded in its conformity to the will of the people of Florida requires either the Governor's approval or passage notwithstanding a veto by a 2/3 vote of each legislative chamber. Thus, it is more difficult for the Legislature to withdraw delegated power from the executive branch than it is to give it.

Emergency Rulemaking
Florida's APA provides for emergency rulemaking by any procedure which is fair under the circumstances when an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules may not be effective for more than 90 days, but may be renewed in specific circumstances when the agency has initiated rulemaking to adopt rules addressing the subject.[27]

Effect of Proposed Changes

The bill suspends all existing rulemaking authority on July 1, 2019, and all new rulemaking authority three years after its enactment unless the Legislature reauthorizes the rulemaking authority. Any reauthorization will have a three-year life unless a different period is provided in the reauthorization.

The bill provides that reauthorization must be by general law. The Legislature can be expected to use general bills to reauthorize rulemaking by reference to chapter, agency, or specific section of law, in a manner procedurally similar to the ratification of rules under s. 120.541(3), F.S.

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[16] Section 120.541(2)(a) 2., F.S.
[17] Section 120.541(2)(a) 3., F.S.
[18] Section 120.54(3)(e)6. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[19] Section 120.54(3)(e)6., F.S.
[20] Section 120.54(3)(e), F.S.
[21] Section 120.54(3)(a)4., F.S.
[22] Section 120.545(1), F.S.
[23] Sections 120.54(3)(e)4. and 120.545(3), F.S.
[24] Florida Administrative Code.
[25] An informal review by the House Rulemaking and Regulation Subcommittee in 2011-12 identified in excess of 2500 rule authorizing provisions in Florida Statutes that have been cited as authority by agencies. There are other redundant and unnecessary provisions that are never used. See section 11.
[26] See, for example, "Summary Final Order," Florida Medical Association, Inc, et al. vs. Department of Health, Board of Nursing, et al., Case 12-1545RP, accessed on January 11, 2016, at: https://www.doah.state.fl.us/ROS/2012/12001545.pdf.
[27] Section 120.54(4), F.S.

By suspending the laws authorizing rulemaking, rather than repealing them or directing their expiration, reauthorization is not expected to require re-enactment of rulemaking authority, but instead only a clear statement in law that a suspension is avoided or lifted. The bill allows the Legislature to reauthorize currently existing rulemaking on its own schedule to avoid having to reauthorize all such rulemaking in the 2019 Regular Session.

The bill allows an agency to continue or initiate rulemaking proceedings during a suspension, but a rule adopted during a suspension of authority may not take effect unless ratified by the Legislature.

The bill does not apply to emergency rulemaking or rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions. This allows the public health, safety, and welfare to be protected and assures the reliability of state obligations, such as bonds financing toll roads.

The bill supports the emergency rule exception to a rulemaking suspension by conforming the statutory provisions allowing renewal of an emergency rule.[28] Specifically, it allows renewal when a permanent rule is pending legislative ratification under any law. [29] It also clarifies that an emergency rule may be renewed pending ratification of a permanent rule or during a pre-adoption administrative rule challenge[30] only when the danger persists that justified emergency rulemaking.

Finally, the bill authorizes the Governor to issue a written declaration of public necessity to delay a suspension for 90 days, allowing the Legislature to convene and reauthorize the rulemaking authority. In the event the Legislature adjourns a regular session without reauthorizing needed rulemaking authority, the Governor would be able to confront the Legislature's neglect by issuing the declaration and calling a special session. The bill does not specify what type or level of "public necessity" is sufficient to delay suspension.

The bill expressly provides that all rules lawfully adopted remain in effect during any suspension of rulemaking authority under the bill's provisions.

B. SECTION DIRECTORY:

SECTION 1. amends s. 120.536, F.S., creating a new subsection (2) providing for suspension and reauthorization of rulemaking authority.

SECTION 2. amends s. 120.54(4)(c), F.S., allowing renewal of an emergency rule during pendency of a request for legislative ratification of the permanent rule on the subject.

SECTION 3. provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to affect revenues of the state.

2. Expenditures:

   There may be an indeterminate but likely insignificant fiscal impact to the state. See Fiscal Comments.

[28] Section 120.54(4)(c), F.S.
[29] Such laws would include the provisions of the bill and s. 120.541(3), F.S.
[30] Section 120.56(2), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to affect local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to impact the private sector economy.

D. FISCAL COMMENTS:

Some state agencies have expressed concern about increased workload; however, it is anticipated that any increase in workload is insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill regularly suspends rulemaking authority, unless reauthorized by general law, and provides that no rule adopted during a suspension is effective without ratification by the Legislature. The bill also clarifies that the authority to renew emergency rules while a challenge to a proposed permanent rule is pending or while the rules are awaiting legislative ratification exists only if the danger upon which the emergency rule is based is continuing at the time of renewal.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Rulemaking Oversight and Repeal Subcommittee adopted an amendment revising the emergency rulemaking provision to clarify that emergency rules may be renewed during the pendency of a ratification request regarding the permanent rule. This analysis is drafted to the bill as approved by the Rulemaking Oversight and Repeal Subcommittee.

A bill to be entitled

An act relating to legislative reauthorization of agency rulemaking authority; amending s. 120.536, F.S.; providing for suspension of certain rulemaking authority after a specified period, until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization, until reauthorized by general law; requiring legislative ratification of rules adopted while rulemaking authority is suspended; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; providing exceptions; providing applicability; amending s. 120.54, F.S.; revising circumstances under which emergency rules may be renewed; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) through (4) of section 120.536, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section to read:

120.536 Rulemaking authority; reauthorization; repeal;

CODING: Words stricken are deletions; words underlined are additions.

challenge.—

(2)(a) Notwithstanding any other provision of law, and except as provided in paragraph (d), any new rulemaking authority is suspended 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law. Any rulemaking authority effective on or before July 1, 2016, is suspended July 1, 2019, until reauthorized by general law.

(b) A reauthorization of rulemaking authority remains in effect for 3 years, unless another date is specified in the law reauthorizing rulemaking, after which the reauthorization expires and the rulemaking authority is suspended until reauthorized by general law.

(c) During the suspension of any rulemaking authority under this subsection, a rule may be adopted pursuant to such rulemaking authority but does not take effect unless ratified by the Legislature. Upon written declaration by the Governor of a public necessity, suspension of any rulemaking authority may be delayed for up to 90 days, allowing the Legislature an opportunity to reauthorize the rulemaking authority. A declaration of public necessity may be issued only once with respect to any suspension of rulemaking authority.

(d) This subsection does not apply to:

1. Emergency rulemaking pursuant to s. 120.54(4).

2. Rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions.

(e) Rules lawfully adopted remain in effect during any suspension of rulemaking authority under this subsection.

Section 2. Paragraph (c) of subsection (4) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency finds that the immediate danger remains and continues to require emergency action, the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule, and one of the following conditions has delayed implementation of the rules ~~either~~:

1. A challenge to the proposed rules has been filed and remains pending; or

2. The proposed rules have been filed for adoption and are awaiting ratification by the Legislature pursuant to any law requiring ratification for the rules to be effective ~~s. 120.541(3)~~.

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

Section 3. This act shall take effect July 1, 2016.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Eisnaugle offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (2) through (4) of section 120.536, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section to read:

120.536 Rulemaking authority; reauthorization; repeal; challenge.—

(2)(a) Notwithstanding any other provision of law, and except as provided in paragraph (g), any new rulemaking authority is suspended 4 years after the effective date of the law authorizing rulemaking until reauthorized by general law. Any rulemaking authority effective on or before July 1, 2016, is suspended July 1, 2020, until reauthorized by general law.

(b) Unless another date is specified in the law reauthorizing rulemaking, a reauthorization of rulemaking authority remains in effect until July 1 of the 4th calendar year following the year in which the reauthorization occurs, after which the reauthorization expires and the rulemaking authority is suspended until again reauthorized by general law.

(c) During the suspension of any rulemaking authority under this subsection, a rule may be adopted pursuant to such rulemaking authority but does not take effect unless ratified by the Legislature. Upon written declaration by the Governor of a public necessity, suspension of any rulemaking authority may be delayed for up to 90 days, allowing the Legislature an opportunity to reauthorize the rulemaking authority. A declaration of public necessity may be issued only once with respect to any suspension of rulemaking authority.

(d) Subject to the rules of the Senate and the House of Representatives, the President of the Senate and the Speaker of the House of Representatives may appoint a joint committee for the purpose of overseeing the review of rulemaking authority pursuant to this subsection. The presiding officers may agree on a 1-year and a 4-year work plan for review of rulemaking authority. The joint committee shall report its recommendations regarding reauthorization of rulemaking authority to the President of the Senate and the Speaker of the House of Representatives each year on or before the convening of the regular session of the Legislature.

(e) An agency may give notice by October 1 of each year to the Legislature of any agency rulemaking authority that is subject to suspension within the next 2 years. Such notice must be in writing and delivered to the President of the Senate, the Speaker of the House of Representatives, and to the chair and vice chair of any joint committee appointed pursuant to paragraph (d). Such notice may include recommendations for reauthorizing, repealing, or amending existing rulemaking authority. An agency may combine multiple notices for administrative convenience.

(f) Rules lawfully adopted remain in effect during any suspension of rulemaking authority under this subsection.

(g) This subsection does not apply to:

1. Emergency rulemaking pursuant to s. 120.54(4).

2. Rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions.

Section 2. Paragraph (c) of subsection (4) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

(c) An emergency rule adopted under this subsection shall not be effective for ~~a period~~ longer than 90 days and shall not be renewable, except when the agency finds that the immediate danger remains and continues to require emergency action, the agency has initiated rulemaking to adopt rules addressing the

subject of the emergency rule, and one of the following conditions has delayed implementation of the rules ~~either~~:

1. A challenge to the proposed rules has been filed and remains pending; or

2. The proposed rules have been filed for adoption and are awaiting ratification by the Legislature pursuant to any law requiring ratification for the rules to be effective ~~s. 120.541(3)~~.

~~Nothing in~~ This paragraph does not prohibit ~~prohibits~~ the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

Section 3. This act shall take effect July 1, 2016.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to legislative reauthorization of agency rulemaking authority; amending s. 120.536, F.S.; providing for suspension of certain rulemaking authority after a specified period until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization until reauthorized by general

law; requiring legislative ratification of rules adopted while rulemaking authority is suspended; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; authorizing the presiding officers of the Legislature to appoint a joint committee to oversee the review of rulemaking authority; requiring the committee to annually report to the Legislature; authorizing an agency to provide notice to the Legislature of any rulemaking authority subject to suspension; prescribing notice requirements; specifying that lawfully adopted rules remain in effect during a suspension of rulemaking authority; providing applicability; amending s. 120.54, F.S.; revising limitations with respect to the timeframe in which an emergency rule may be effective; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1051 Recreational Boating Zones
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore, R.	Harrington
2) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes. These rights are designed to promote the general welfare and are subject to lawful regulation by the state. The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common. Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes. As such, the right to anchor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights, such as the right to access the water, the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view of the water. Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.

The bill creates s. 327.4107, F.S., providing for the anchoring of vessels in recreational boating zones. The bill prohibits a person from anchoring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County;
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island;
  - San Marco Island and Biscayne Island; and
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill provides certain exceptions to the prohibition on anchoring in recreational boating zones and enforcement procedures. The bill also provides for the issuance of a uniform boating citation with tiered penalties and authorizes the removal and impoundment of a vessel for violating the prohibition on anchoring in a recreational boating zone in certain circumstances.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands Act

The Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States (U.S.), acquires:

- Title to and ownership of the lands beneath navigable waters within the boundaries of the respective states,[1] and the natural resources within such lands and waters; and
- The right and power to manage, administer, lease, develop, and use the lands and natural resources all in accordance with applicable state law.[2]

Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which are paramount to, but are not deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective states.[3]

States possess an "absolute right to all their navigable waters and the soils under them for their own common use."[4] Drawing on this principle, the U.S. Supreme Court held that ownership of submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water, "is an essential attribute of sovereignty."[5] Consequently, "'[a] court deciding a question of title to [a] bed of navigable water [within a State's boundaries] must ... begin with a strong presumption' against defeat of a State's title."[6]

Federal Regulations on Anchoring and Mooring

Federal law restricts anchoring and mooring in all waterways tributary to the Atlantic Ocean south of Chesapeake Bay and the Gulf of Mexico east and south of St. Marks, Florida,[7] and the Gulf of Mexico (except the Mississippi River) from St. Marks, Florida, to the Rio Grande.[8] Waterways include all navigable waters of the U.S., natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways.[9]

A clear channel must at all times be left open to permit free and unobstructed navigation by all types of vessels.[10] Accordingly, a person may not anchor or moor a vessel in any of the land cuts or other

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[1] 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).
[2] 43 U.S.C. §1301 and §1311(a).
[3] 43 U.S.C. §1314(a).
[4] *Tarrant Regional Water District v. Hermann*, 133 S.Ct. 2120 (2013) (quoting *Martin v. Lessee of Waddell,* 41 U.S. 367 (1842)).
[5] *Id.*, (quoting *U. S. v. Alaska,* 521 U.S. 1 (1997).
[6] *Id.*, (quoting *Montana v. United States,* 450 U.S. 544 (1981)); see also *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers,* 531 U.S. 159 (2001); *Utah Div. of State Lands v. United States,* 482 U.S. 193 (1987).
[7] 33 C.F.R. §162.65.
[8] 33 C.F.R. §162.75.
[9] 33 C.F.R. §162.65(a)(1) and §162.75(a)(1).
[10] 33 C.F.R. §162.65(b)(1) and §162.75(b)(1).

narrow parts of the waterway, except in case of an emergency, or with permission of the U.S. Army Corps of Engineers (Corps).[11] Stoppage may be only for such periods as may be necessary.[12] Additionally, a vessel may not anchor in a dredged channel or narrow portion of a waterway to fish if navigation is obstructed.[13] Lastly, when temporarily anchored or moored, vessels must be tied up and display lights as required by the federal navigation rules.[14]

Federal Anchorage Grounds

The U.S. Department of Homeland Security is authorized, empowered, and directed to establish anchorage grounds in all harbors, rivers, bays, and other navigable waters of the U.S. whenever the maritime or commercial interests of the U.S. requires anchorage grounds for safe navigation. Rules and regulations adopted regarding the establishment of anchorage grounds are enforced by the U.S. Coast Guard (Coast Guard), provided that at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the Corps.[15]

The following anchorage grounds have been established in Florida, primarily for large commercial vessels using major ports:

- Atlantic Ocean off Fort George Inlet, near Mayport;[16]
- St. Johns River;[17]
- Atlantic Ocean, off the Port of Palm Beach;[18]
- Port Everglades;[19]
- Atlantic Ocean off Miami and Miami Beach;[20]
- Key West Harbor, Key West, FL, naval explosives anchorage area;[21]
- Tortugas Harbor, in vicinity of Garden Key, Dry Tortugas, FL;[22]
- Tampa Bay;[23] and
- St. Joseph Bay.[24]

Federal Special Anchorage Areas

A special anchorage area is an area where vessels that are not more than 65 feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. The areas designated are to be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. The authority to designate special anchorage areas is vested in the U.S. Department of Homeland Security and delegated to the Coast Guard.[25]

Special anchorages in Florida include the:

- St. Johns River;[26]

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[11] 33 C.F.R. §162.65(b)(2)(i)-(ii) and §162.7(b)(3)(i).
[12] 33 C.F.R. §162.65(b)(2)(i) and §162.7(b)(3)(i).
[13] 33 C.F.R. §162.65(b)(2)(vii) and §162.75(b)(3)(v).
[14] 33 C.F.R. §162.65(b)(2)(iii)-(iv) and §162.75(b)(3)(ii)-(iii).
[15] 33 U.S.C. §471(a); 33 C.F.R. §109.05.
[16] 33 C.F.R. §110.182.
[17] 33 C.F.R. §110.183; §110.183(3), provides that vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.
[18] 33 C.F.R. §110.185.
[19] 33 C.F.R. §110.186; §110.186(6), provides that no vessel may anchor within the anchorage for more than 72 hours without the prior approval of the Captain of the Port.
[20] 33 C.F.R. §110.188.
[21] 33 C.F.R. §110.189a.
[22] 33 C.F.R. §110.190.
[23] 33 C.F.R. §110.193.
[24] 33 C.F.R. §110.193a.
[25] 33 C.F.R. §109.10.
[26] 33 C.F.R. §110.73.

- Indian River at Sebastian;[27]
- Indian River at Vero Beach;[28]
- Okeechobee Waterway, St. Lucie River, Stuart;[29]
- Marco Island, Marco River;[30]
- Manatee River, Bradenton;[31] and
- Apollo Beach.[32]

Other Federally Designated Anchorages and Moorings in Florida

The Corps possesses the authority to regulate public use of federal water resource development projects in the public interest and the navigable capacity of waters of the U.S.[33] In 2013, the Corps published the Okeechobee Waterway Anchoring and Mooring Policy.[34] It provides the following anchoring and mooring guidance within the Okeechobee Waterway:[35]

- No vessel may anchor in the Okeechobee Waterway, except in case of an emergency or incidental to navigating the 152 mile waterway. Anchoring incidental to navigating the length of the waterway over multiple days is allowed to provide adequate rest for crew members while crossing the waterway to ensure the safety of crew and other users on the waterway. Overnight anchoring may not exceed 24 hours in one location and the vessel needs to show one days travel distance before anchoring again.
- Vessels stopped for longer than 24 hours should be moored or stored at designated areas approved by the Corps, which consists of commercial authorized marinas/docks.[36]

Public and Private Use of Sovereignty Submerged Lands

When Florida entered the Union as a state,[37] pursuant to the SLA, it gained title to the beds of all navigable waterways (sovereignty submerged lands).[38] Sovereignty submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.[39] The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state by virtue of its sovereignty in trust for all the people.[40] Private use of portions of these lands may be authorized by law, but only when not contrary to the public interest.[41] However, these lands cannot be wholly alienated by the state.[42]

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[27] 33 C.F.R. §110.73a.
[28] 33 C.F.R. §110.73b.
[29] 33 C.F.R. §110.73c.
[30] 33 C.F.R. §110.74.
[31] 33 C.F.R. §110.74a.
[32] 33 C.F.R. §110.74b.
[33] 16 U.S.C. §460d; 33 U.S.C. §1; 36 C.F.R. Part 327; 33 C.F.R. §207.160.
[34] Okeechobee Waterway Anchoring and Mooring Policy, available at http://www.saj.usace.army.mil/Portals/44/docs/Navigation/Notices/NTN130318%20Okeechobee%20Waterway%20Anchoring%20and%20Mooring%20Policy.pdf.
[35] *Id.*; The Okeechobee Waterway is defined as the area of water connecting the W.P. Franklin Lock to the St. Lucie Lock via the Caloosahatchee River, Lake Okeechobee, and the St. Lucie Canal, excluding privately excavated canals and tidal influenced waters from the Gulf of Mexico and Atlantic Ocean.
[36] *Id.*
[37] March 3, 1845.
[38] 43 U.S.C. §1312, designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles); *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986); r. 18-21.003(61), F.A.C.
[39] DEP Sovereignty Submerged Lands available at http://www.dep.state.fl.us/lands/submerged.htm.
[40] Section 11, Art. X, Fla. Const.
[41] *Id.*
[42] *Walton Co. v. Stop the Beach Renourishment, Inc.*, 988 So.2d 1102, 1110 (Fla. 2008) *citing Brickell v. Trammell*, 82 So. 221 (Fla. 1919). There are rare instances where sovereignty submerged lands have been conveyed. *See* Chapter 6769, Laws of Florida (1913).

The state may regulate the public's use of sovereignty submerged lands for the benefit of the public as a whole as circumstances may demand, subject to Congress' regulatory power to control commerce.[43] When regulating sovereignty submerged lands, a state has greater authority to restrict its use than it would have over private lands.[44] However, the right to restrict or grant privileges to use such lands must be done in a manner that does not substantially impair the interest of the public as a whole.[45]

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes.[46] These rights are designed to promote the general welfare and are subject to lawful regulation by the state.[47] The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common.[48] Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes.[49] As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.[50]

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights,[51] such as the right to access the water,[52] the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view[53] of the water.[54] Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.[55]

State Anchoring and Mooring Regulations

The Legislature delegated the responsibility of managing sovereignty submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).[56] The Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of sovereignty submerged lands by vessels, floating homes, or any other watercraft.[57] The Board has

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[43] *State v. Gerbing*, 47 So. 353, 356 (Fla. 1908); *State v. Black River Phosphate Co.*, 13 So. 640, 645 (Fla. 1893).
[44] *Mariner Properties Development, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 743 So. 2d 1121, 1122-1123 (Fla. 1st DCA 1999).
[45] *Black River Phosphate Co.*, at 645.
[46] *Stop the Beach Renourishment, Inc.*, at 1110 citing *Brickell*, at 221.
[47] *Id.*
[48] 85-45 Fla. Op. Att'y Gen. (1985).
[49] 85-45 Fla. Op. Att'y Gen. (1985); Ankersen, Thomas T., Richard Hamann & Bryon Flagg, Anchoring Away: Government Regulation of the Right of Navigation in Florida 22 (National Sea Grant 2012) *available at* http://www.floridawateraccess.org/boating/Boating-Toolkit/.
[50] 85-45 Fla. Op. Att'y Gen. (1985), *citing Hall v. Wantz*, 57 N.W.2d 462 (Mich. 1953).
[51] Section 253.141(1), F.S.
[52] *Webb v. Giddens*, 82 So.2d 743, 745 (Fla. 1955) (State Road Department construction of culvert on Lake Jackson blocking access to main water body was found to be an impairment of riparian proprietorship.) *Compare Carmazi v. Board of County Commissioners of Dade Co.,* 108 So.2d 318, 323 (Fla. 3d DCA 1959) (Construction of dam on Little River blocking access to Biscayne Bay was not considered an impairment of riparian rights because it did not deprive a private riparian right. The right of navigation is an interest held by the public as a whole and may be restricted to exercise a necessary police power.)
[53] *Lee Co v. Kiesel*, 705 So.2d 1013, 1016 (Fla. 2d DCA 1998) (Holding that upland owners were entitled to compensation because bridge substantially and materially obstructed their littoral view). *Compare Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957) (To be a compensable obstruction of the riparian right of view, the interference must be substantial).
[54] Section 253.141(1), F.S.; *Stop the Beach Renourishment, Inc.*, at 1111.
[55] *Id.*
[56] Section 253.03(1), F.S. Section 253.03(7), F.S., authorizes the Board to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of all sovereign submerged lands by vessels, floating homes, or any other watercraft. The Board has not exercised this authority to adopt rules to regulate anchoring, but has adopted rules regulating the construction of mooring and docking structures. *See* ch. 18-21, F.A.C.
[57] Section 253.03(1) and (7), F.S.

adopted rules regulating the construction of mooring and docking structures,[58] but has not adopted rules regulating anchoring.

Local Government Regulatory Limitations on Anchoring and Mooring

Local governments may only enact and enforce regulations prohibiting or restricting the mooring or anchoring of:

- A floating structure;[59]
- A live-aboard vessel;[60] or
- A vessel[61] that is within the marked boundaries of a mooring field.[62]

Local governments are otherwise prohibited from regulating the anchoring of vessels that are located outside of a mooring field.[63]

Fish and Wildlife Conservation Commission Anchoring and Mooring Pilot Program

In 2009, the Legislature required the Fish and Wildlife Conservation Commission (FWC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore options for local governments to regulate the anchoring and mooring of vessels located outside of mooring fields.[64] The program today is commonly referred to as the "Anchoring and Mooring Pilot Program."[65] Currently, the only local governments that are allowed to regulate anchoring and mooring outside the marked boundaries of mooring fields are the participants in the program,[66] which include:

- The City of St. Augustine;[67]
- The City of St. Petersburg;[68]
- The City of Sarasota;[69]
- Martin County in partnership with the City of Stuart;[70] and
- Monroe County in partnership with the cities of Marathon and Key West.[71]

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[58] *See* ch. 18-21, F.A.C.

[59] Section 327.02(11), F.S., defines the term "floating structure" as "a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term 'vessel.' Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure."

[60] Section 327.02(19), F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed pursuant to s. 222.17." The term expressly excludes commercial fishing boats.

[61] Section 327.02(43), F.S., defines term "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

[62] Section 327.60(3), F.S.

[63] Section 327.60(2)(f) and (3), F.S.

[64] Chapter 2009-86, Laws of Florida; s. 327.4105, F.S.

[65] *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[66] Section 327.4105(3), F.S.

[67] The City of St. Augustine's ordinance is available at http://www.staugustinegovernment.com/visitors/documents/Ord2011-10-2.pdf.

[68] The City of St. Petersburg's ordinance is available at http://myfwc.com/media/2221101/StPeteOrdinance.pdf.

[69] The City of Sarasota's ordinance is available at http://myfwc.com/media/2405171/Sarasota-final-Ord-12-5003.pdf.

[70] Martin County's ordinance is available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjACahUKEwivnoHv4urIAhVMVh4KHRx7AEg&url=http%3A%2F%2Fwww.martin.fl.us%2Fweb_docs%2Feng%2Fweb%2Fcoastal%2FAnchoring_Mooring%2FOrd928.pdf&usg=AFQjCNFK0Ou_MYuDiO-U5VxVaZt_WautuA.

[71] Monroe County's ordinance is available at https://fl-monroecounty.civicplus.com/Documentview.aspx?DID=4039

The goals of the pilot program are to encourage the establishment of additional mooring fields and to develop and test policies and regulatory regimes that:[72]

- Promote the establishment and use of mooring fields;
- Promote access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect marine environment; and
- Deter improperly stored, abandoned, or derelict vessels.

FWC submitted a report of its findings and recommendations of the pilot program to the Legislature on December 31, 2013.[73] FWC recommended an extension of the program for an additional three years to allow a more thorough and complete assessment of the local government ordinances being implemented.[74] In 2014, the program was extended by the Legislature.[75] FWC must submit an updated report of its findings and recommendations to the Governor and Legislature by January 1, 2017.[76] The program and the local government ordinances developed under the program are set to expire on July 1, 2017, unless reenacted by the Legislature.[77]

Noncriminal Boating Infractions

Section 327.73(1), F.S., provides that a person cited for a violation of certain vessel laws of the state is charged with a noncriminal infraction, will be cited for the infraction, and ordered to appear in county court. The civil penalty for an infraction is $50, except as otherwise provided by law.[78] A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082[79] or s. 775.083, F.S.[80] A written warning to this effect is provided when the citation is issued.[81]

Effect of Proposed Changes

The bill creates s. 327.4107, F.S., providing for the anchoring of vessels in recreational boating zones. The bill prohibits a person from anchoring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County;
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island;
  - San Marco Island and Biscayne Island; and

FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[72] Section 327.4105(1), F.S.

[73] Section 327.4105(5), F.S.; *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[74] *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[75] Chapter 2014-136, Laws of Florida.

[76] Section 327.4105(5), F.S.

[77] Section 327.4105(6), F.S.

[78] Section 327.73(1), F.S.

[79] A person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days.

[80] A person who has been convicted of a noncriminal violation may be sentenced to pay a fine which must not exceed $500.

[81] Section 327.73(1), F.S

- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill allows a person to anchor a vessel in a recreational boating zone:

- If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired; and
- During events described in s. 327.48, F.S.,[82] or other special events, including, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the duration of the special event or for 3 days, whichever occurs first.

The bill provides that recreational boating zones do not apply to:

- Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; or
- Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

The bill defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4107, F.S., pursuant to s. 327.70, F.S.,[83] and provides that:

- A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4107, F.S.:
    - Anchors the vessel in violation of s. 327.4107, F.S., within 12 hours after being issued the citation; or
    - Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency;
- A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
- A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
    - Be licensed in accordance with Coast Guard regulations;
    - Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
    - Be properly equipped to perform the services; and
- In addition to the civil penalty imposed under s. 327.73(1)(y), F.S.,[84] the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours.

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[82] Section 327.48, F.S., provides for regattas, races, marine parades, tournaments, or exhibitions.

[83] Section 327.70, F.S., provides that chs. 327 and 328, F.S., must be enforced by the Division of Law Enforcement of the FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S., all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of chs. 327 and 328, F.S., or cause any inspections to be made of all vessels in accordance with chs. 327 and 328, F.S.

[84] Section 327.73, F.S., provides for non-criminal infractions of vessel laws.

The bill provides that a violation of the prohibition on the anchoring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., providing the following penalty:

- For a first offense, up to a maximum of $50;
- For a second offense, up to a maximum of $100; and
- For a third or subsequent offense, up to a maximum of $250.

The bill amends s. 327.70, F.S., regarding enforcement to provide that a noncriminal violation of s. 327.4107, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

B. SECTION DIRECTORY:

Section 1. Creates s. 327.4107, F.S., regarding the anchoring of vessels in recreational boating zones.

Section 2. Amends s. 327.70(2), F.S., regarding enforcement.

Section 3. Amends s. 327.73(1), F.S., regarding noncriminal infractions of vessel laws of the state.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an indeterminate fiscal impact on local governments. While local governments may experience positive fiscal impacts resulting from the issuance of boating citations, local governments may also experience increased costs due to increased enforcement efforts.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a noncriminal boating infraction for anchoring in a recreational boating zone. As such, a violator will be charged with a noncriminal infraction, cited, and ordered to appear in county court. The noncriminal infraction includes tiered civil penalties. A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine which must not exceed $500.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting a special law[85] unless notice is first published or the law is conditioned upon becoming effective through referendum. A special law, or "local law" does not apply with geographic uniformity across the state; it operates only upon designated persons or discrete regions, and bears no reasonable relationship to differences in population or other classification.[86]

A general law of local application applies to a district region or set of subdivisions within the state and its classification scheme is based on population or some other reasonable characteristic which distinguishes one locality from another.[87] If particular conditions exist in only a portion of the state, enactments with reference thereto nonetheless may be general laws.[88] If a law utilizes a classification that is geographical in its term but its purpose is one of statewide import and impact, and the classification is reasonably related to the law's purpose, it is a valid general law.[89] General laws and general laws of local application do not require notice or a referendum.[90]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Allows a person to anchor a vessel in a recreational boating zone:
  - If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first;
  - If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired; and

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[85] Fla. Const. art. X, §12(g).
[86] *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So.3d 1137 (Fla. 2014) (citing *Dept. of Bus. Reg. v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989).
[87] *City of Miami Beach v. Frankel*, 363 So.2d 555 (Fla. 1978).
[88] *Schrader v. Fla. Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).
[89] *Id.* at 1056.
[90] *See Schrader v. Fla. Keys Aqueduct Authority*, 840 So.2d 1050 (Fla. 2003); Fla. Const. art. III, §10.

A vessel may anchor for the duration of the special event or for 3 days, whichever occurs first;

- Provides that recreational boating zones do not apply to:
  - Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes;
  - Construction or dredging vessels on an active job site;
  - Vessels actively engaged in commercial fishing; or
  - Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets;
- Defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4107, F.S., pursuant to s. 327.70, F.S., and provides that:
  - A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4104, F.S.:
    - Anchors the vessel in violation of this section within 12 hours after being issued the citation; or
    - Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency;
  - A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
  - A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
    - Be licensed in accordance with Coast Guard regulations;
    - Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
    - Be properly equipped to perform the services.
  - In addition to the civil penalty imposed under s. 327.73(1)(y), F.S., the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours;
- Provides that a violation of the prohibition on the anchoring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., to provide the following penalties:
  - For a first offense, up to a maximum of $50;
  - For a second offense, up to a maximum of $100;
  - For a third or subsequent offense, up to a maximum of $250; and
- Amends s. 327.70, F.S., regarding enforcement, to provide that a noncriminal violation of s. 327.4107, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

This analysis is drafted to the committee substitute as approved by the subcommittee.

A bill to be entitled

An act relating to recreational boating zones; creating s. 327.4107, F.S.; prohibiting overnight anchoring of vessels in specified recreational boating zones; providing exceptions; providing applicability; authorizing specified law enforcement officers and agencies to remove and impound vessels or cause vessels to be removed or impounded under certain conditions; providing indemnification for such law enforcement officers and agencies in certain circumstances; providing requirements for contractors performing such removal or impoundment services; providing that certain vessel operators are required to pay removal and storage fees and are subject to specified penalties; amending s. 327.70, F.S.; providing for issuance of citations relating to the unlawful anchoring of vessels in recreational boating zones; amending s. 327.73, F.S.; providing penalties relating to the anchoring of vessels in recreational boating zones; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 327.4107, Florida Statutes, is created to read:

327.4107 Anchoring of vessels in recreational boating

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

zones.—

(1) Except as provided in subsections (2) and (3), a person may not anchor a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(d) Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

(2) A person may anchor a vessel in a recreational boating zone:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such

risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the duration of the special event or for 3 days, whichever occurs first.

(3) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(4)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within

12 hours after being issued the citation; or

2. Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(y), the operator of a vessel that is removed and impounded pursuant to paragraph (a) shall pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (a) may not be impounded for longer than 48 hours.

(5) A violation of this section is punishable as provided in s. 327.73(1)(y).

Section 2. Paragraph (c) is added to subsection (2) of section 327.70, Florida Statutes, to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)

(c) A noncriminal violation of s. 327.4107 may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

Section 3. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4107, relating to the anchoring of vessels in recreational boating zones, for which the penalty is:

1. For a first offense, up to a maximum of $50.

2. For a second offense, up to a maximum of $100.

3. For a third or subsequent offense, up to a maximum of $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the

charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 4. This act shall take effect July 1, 2016.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Caldwell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 327.4108, Florida Statutes, is created to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic are designated as anchoring limitation areas:

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchorage limitation area.

(3) Notwithstanding subsection (2), a person may anchor a vessel in an anchorage limitation area:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or a tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or for 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing, if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchorage limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchorage limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(y), the operator of a vessel that is removed and impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(y).

(7) This section expires upon the Legislature's adoption of the commission's recommendations for the **regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.**

Section 2. Paragraph (c) is added to subsection (2) of section 327.70, Florida Statutes, to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)

(c) A noncriminal violation of s. 327.4108 may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in an anchoring limitation area.

Section 3. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4108, relating to the anchoring of vessels in anchoring limitation areas, for which the penalty is:

1. For a first offense, up to a maximum of $50.

2. For a second offense, up to a maximum of $100.

3. For a third or subsequent offense, up to a maximum of $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the

charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 4. This act shall take effect July 1, 2016.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to anchoring limitation areas; creating s. 327.4108, F.S.; prohibiting overnight anchoring of vessels in specified anchoring limitation areas; providing exceptions; providing for the removal and impounding of vessels under certain circumstances; providing penalties; amending s. 327.70, F.S.; providing for violations to be enforced by the issuance of a uniform boating citation; providing for the expiration of the section upon an act of the Legislature; amending s. 327.73, F.S.; providing penalties; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1095 Prevention of Acts of War
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Ray and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N, As CS	Malcolm	White
2) Justice Appropriations Subcommittee	9 Y, 3 N, As CS	Smith	Lloyd
3) State Affairs Committee		Camechis	Camechis

SUMMARY ANALYSIS

This bill creates a section of law entitled "prevention of acts of war", which establishes a process for reporting, screening, monitoring, and possibly preventing certain foreign immigrants and refugees from entering or resettling in this state.

With respect to "restricted persons," the bill:

- Defines "restricted person" and prohibits any state or local governmental entity or employee from cooperating or assisting with the entry or resettlement of a restricted person in this state unless authorized by the Governor;
- Authorizes the Governor to monitor the presence of restricted persons in this state;
- Authorizes the Governor to use all powers and resources, including emergency powers and military force, to prevent certain restricted persons from entering or resettling in the state and to prevent certain restricted persons residing in the state from committing an act of war;
- Directs the Governor and the Attorney General to take any lawful action to prevent the entry or resettlement of certain restricted persons in this state by the Federal Government or any other person;
- Prohibits any person who receives state funds from assisting with the entry or resettlement of a restricted person in this state for a period of 5 years unless the assistance is authorized by the Governor; and
- Prohibits any person who assists with the entry or resettlement of a restricted person in this state from receiving state funds for a period of 5 years unless the assistance is authorized by the Governor.

With respect to foreign refugees or immigrants born in the Eastern Hemisphere:

- If, upon the effective date of the bill, a person is engaged through a resettlement program in assisting foreign refugees or immigrants who were born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to the Florida Department of Law Enforcement (FDLE) personal identifying information of each such refugee or immigrant who was assisted before the effective date of the bill. The personal identifying information must be provided to FDLE within 30 days after the bill becomes law; and
- If, before the effective date of this bill, a person assisted through a resettlement program any foreign refugee or immigrant who was born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each such refugee or immigrant currently residing in this state. The personal identifying information must be provided to FDLE within 90 days after the bill becomes law.

With respect to foreign refugees or immigrants regardless of birthplace:

- If, after the effective date of this bill, a person assists through a public or private resettlement program any foreign refugee or immigrant with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each assisted refugee or immigrant. The personal identifying information must be submitted to FDLE when the person agrees to assist the foreign refugee or immigrant;
- The bill requires FDLE to conduct background screenings on all foreign refugees or immigrants who have been or will be assisted with entry or resettlement in this state through a resettlement program and all refugees or immigrants who have continuously resided in this state since January 1, 2011; and
- The bill requires fees incurred by FDLE for background screenings and processing and retention of personal identifying information to be paid by the foreign refugee or immigrant or the person assisting with his or her entry or resettlement in this state.

This bill will have an indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens," and thus has established an "extensive and complex" set of rules governing the admission and removal of aliens, along with conditions for aliens' continued presence within the United States.[1] Federal law creates a number of immigrant classifications, such as family members of U.S. citizens, spouses and fiancés of U.S. citizens, employment-based immigrants, asylees, and refugees.[2]

Refugees

A refugee is generally defined in federal law as a person who is outside his or her home country, and who is unable or unwilling to return to and avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[3] The admission and resettlement of refugees in the United States is governed by the federal Immigration and Nationality Act, as amended by the Refugee Act of 1980.[4] The President is responsible for determining the total number of refugees that will be admitted to the United States each year.[5] Subject to the President's numerical limitations, the U.S. Citizenship and Immigration Services within the Department of Homeland Security processes applications for refugee status and determines whether to admit an individual to the United States as a refugee.[6]

Refugee Application and Processing

The refugee application process typically begins when the United Nations High Council on Refugees (UNHCR) refers a refugee applicant's case to the United States for resettlement.[7] The case is first received and processed by one of nine Department of State-funded Resettlement Support Centers (RSCs) located outside the U.S. The RSC prepares the refugee application for resettlement consideration.[8] It collects biographic and other information from the applicant to prepare for an adjudication interview and security screening. Enhanced security screening is a joint responsibility of the Department of State and the Department of Homeland Security, and includes the participation of multiple U.S. Government intelligence and security agencies, including the Federal Bureau of Investigation and the Department of Defense.[9]

Officers from the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) review all the information that the RSC has collected and conduct an in-person interview with each refugee applicant before deciding whether to approve the applicant for entry and resettlement in the United States.

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[1] *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).
[2] *See* Directory of Visa Categories, U.S. Department of State, Bureau of Consular Affairs, https://travel.state.gov/content/visas/en/general/all-visa-categories.html (last visited Jan. 29, 2015).
[3] 8 U.S.C. § 1101(a)(42)(A).
[4] 8 U.S.C. §§ 1157, 1521-1524.
[5] 8 U.S.C. § 1157(a)(2)-(3). The President may increase the number of refugees to be admitted in a given year if he determines that an "unforeseen refugee situation exists" and certain other conditions are met. 8 U.S.C. § 1157(b).
[6] *Id.* § 1157(c)(1); 8 C.F.R. 207.
[7] Some refugees can start the application process with the RSC without a referral from UNHCR or other entity. This includes close relatives of asylees and refugees already in the United States and refugees who belong to specific groups set forth in statute or identified by the Department of State as being eligible for direct access to the program.
[8] U.S. Refugee Admissions Program, Application and Case Processing, U.S. Department of State, http://www.state.gov/j/prm/ra/admissions/index.htm (last visited Jan. 29, 2015).
[9] Background Briefing on Refugee Screenings and Admissions, U.S. Department of State (Nov. 17, 2015), http://www.state.gov/r/pa/prs/ps/2015/11/249613.htm (last visited Jan. 29, 2015).

Approved refugees undergo a health screening to identify medical needs and to ensure that those with a contagious disease do not enter the United States. Finally, the RSC requests a "sponsorship assurance" from a one of nine U.S.-based resettlement agencies, which decides where in the United States the refugee will be placed, subject to final approval from the Department of State's Bureau of Population, Refugees, and Migration.[10]

Refugees who are approved for entry into the United States by USCIS receive assistance upon arrival in the United States through the Department of State's Reception and Placement Program – a cooperative public-private program made up of a number of participants. After one year in the United States, refugees are required to apply for permanent residence (commonly referred to as a "green card") and after five years in the United States, a refugee is eligible to apply for U.S. citizenship.[11]

The total processing time for a refugee application varies depending upon an applicant's location and other circumstances, but the average time from the initial UNHCR referral to arrival as a refugee in the United States is about 18-24 months.[12]

State Involvement in Refugee Settlement

Both the Director of the Office of Refugee Resettlement and the Bureau of Population, Refugees, and Migration are required to consult regularly with state and local governments and private nonprofit agencies concerning the sponsorship process and the distribution of refugees among the states and localities.[13] The Director is also required to "develop and implement, in consultation with representatives of voluntary agencies and state and local governments, policies and strategies for the placement and resettlement of refugees . . . ."[14] Such policies and strategies must:

- Insure that a refugee is not placed or resettled in an area highly impacted by the presence of refugees or comparable populations unless the refugee has family residing in that area;
- Provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly meet with state and local government officials to plan and coordinate the appropriate placement of refugees: and
- Take into account the:
  - Proportion of refugees and comparable entrants in the population in the area;
  - Availability of employment opportunities, affordable housing, and public and private resources for refugees in the area;
  - Likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and
  - Secondary migration of refugees to and from the area that is likely to occur.[15]

Congress has also required that, "[w]ith respect to the location of placement of refugees within a State," the Bureau must, consistent with the above policies and strategies and to the maximum extent possible, take into account recommendations of the state in determining where to place a refugee.[16]

Refugee Services Program in Florida

The Office of Refugee Resettlement within the United States Department of Health and Human Services makes federal funds available to states to support the resettlement of refugees.[17] In Florida, the Department of Children and Families' Refugee Services Program is the recipient of these federal

[10] 8 U.S.C. § 1522(b)(1)(A); U.S. Gov't Accountability Office, GAO-12-729, Refugee Resettlement: Greater Consultation with Community Stakeholders Could Strengthen Program 4-5, 7 (2012); *see* U.S. Dep't of State, The Reception and Placement Program, available at http://www.state.gov/j/prm/ra/receptionplacement/index.htm (last visited Jan. 29, 2015).
[11] U.S. Dep't of State, The Reception and Placement Program, available at http://www.state.gov/j/prm/ra/receptionplacement/index.htm (last visited Jan. 29, 2015).
[12] U.S. Refugee Admissions Program, *supra* note 8.
[13] 8 U.S.C. § 1522(a)(2)(A).
[14] *Id.* § 1522(a)(2)(B).
[15] *Id.* § 1522(a)(2)(C).
[16] *Id.* § 1522(a)(2)(D).
[17] 8 U.S.C. §1522; 45 C.F.R. pt. 400.

funds.[18] Florida's Refugee Services Program is the largest in the nation, receiving more than 27,000 refugees, asylees, and Cuban/Haitian entrants each year.[19] Refugee Services' clients all have a legal immigration status.[20] The Refugee Services Program only provides services to individuals with specific legal immigration status: refugees, asylees, Cuban/Haitan entrants, and foreign victims of human trafficking. Cubans account for more than 80% of the arrivals to the state each year.[21]

EFFECT OF PROPOSED CHANGES

This bill creates a section of law entitled "prevention of acts of war," which establishes a process for reporting, screening, monitoring, and possibly preventing certain foreign immigrants and refugees from entering or resettling in this state.

Provisions Regarding Restricted Persons

Definitions

The bill defines *"restricted person"* as a foreign refugee or immigrant for whom there is reasonable cause to believe that he or she originates from, or has been in close proximity to, any location designated by the Governor in which:

- Invaders or prospective invaders are known to originate, organize, or train for violent acts of war; or
- A foreign terrorist organization designated by the United States Secretary of State pursuant to 8 U.S.C. s. 1189 organizes, operates, or trains.

The bill also defines *"invader"* as a person who is not a United States citizen who enters into or remains in the state with the intent of doing violence to persons or destroying property as part of any conspiracy or plan to:

- Violently injure the way of life for citizens of the state;
- Weaken or conquer all or any portion of the state or of the United States; or
- Wage war against the United States, to ally with its enemies, or provide comfort and aid to its enemies.

Entry or Resettlement of Restricted Persons

Unless expressly authorized by the Governor, the bill prohibits a state or local government entity or employee from cooperating with or assisting any person, including a federal agent, with the entry into or resettlement in Florida of a restricted person.

In addition, unless expressly authorized by the Governor, the bill prohibits a person who receives state funds for any purpose from assisting with the entry into or resettlement of a restricted person in this state for 5 years after receiving state funds. After the effective date of the bill, a person who assists with the entry into or resettlement of a restricted person in this state is prohibited from receiving state funds for any purpose for 5 years after the most recent act of assistance to a restricted person, unless the Governor expressly authorized such assistance.

Gubernatorial Powers Applicable to Restricted Persons

The bill authorizes the Governor to:

- Use all powers and resources, including police powers, emergency powers, and military force, to prevent a restricted person from entering into or resettling in the state and to prevent a restricted person residing in the state from committing violent acts of war, unless the Governor has reasonable cause to believe that a restricted person is not an invader;
- Monitor the presence of a restricted person entering into, resettling in, or residing in the state.

[18] Refugee Services Program, Department of Children and Families, *General Program Overview*, http://www.myflfamilies.com/service-programs/refugee-services/overview (last visited Jan. 15, 2016).
[19] *Id.*
[20] *Id.*
[21] *Id.*

- Adopt emergency rules and permanent rules necessary to implement the bill; and
- Exempt individuals or categories of individuals from the requirements of the bill in order to efficiently use departmental resources for public safety.

Actions to Prevent Resettlement of Restricted Persons

The Governor and the Attorney General are independently authorized to review and challenge the lawfulness of any federal law or regulation encouraging or providing for the entry into or resettlement of restricted persons in this state.

In addition, the Governor and the Attorney General are independently directed to take any action authorized by law to prevent the entry into or resettlement in the state of a restricted person by the Federal Government or any other person, unless the Governor has reasonable cause to believe that the restricted person is not an invader.

Provisions Regarding Foreign Refugees and Immigrants

Definitions

The bill creates two additional definitions that are necessary to implement provisions regarding foreign refugees and immigrants.

The bill defines "*foreign refugee or immigrant*" as a person who is not a United States citizen but who seeks entry into or resettlement in this state.

The bill also defines "*personal identifying information*" of a foreign refugee or immigrant as including passport information and fingerprints, addresses and geographical location of any temporary or permanent residence that has been or may be used, and other information required by the Governor.

Reporting Requirement for Refugees or Immigrants Born in the Eastern Hemisphere

If, upon the effective date of the bill, a person is engaged through a public or private resettlement assistance program in assisting foreign refugees or immigrants who were born in the Eastern Hemisphere with the entry into or resettlement in this state, the person must submit to the Florida Department of Law Enforcement (FDLE) personal identifying information of each such foreign refugee or immigrant who was assisted by the person before the effective date of the bill. The personal identifying information must be provided to FDLE within 30 days after the bill becomes law.

If, before the effective date of this bill, a person assisted through a public or private resettlement program any foreign refugees or immigrants who were born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each such refugee or immigrant currently residing in the state. The personal identifying information must be submitted to FDLE within 90 days after the bill becomes law.

Reporting Requirements and Background Screenings for Foreign Refugees or Immigrants Regardless of Birthplace

If, after the effective date of this bill, a person assists through a public or private resettlement program *any* foreign refugee or immigrant with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each foreign refugee or immigrant assisted by the person. The personal identifying information must be submitted to FDLE when the person agrees to assist the foreign refugee or immigrant.

FDLE is required to conduct background screenings on all foreign refugees or immigrants who have been or will be assisted with entry or resettlement in this state through a resettlement program and all refugees or immigrants who have continuously resided in this state since January 1, 2011. The screening must be conducted within a specified number of days after receiving personal identifying

information from persons who assisted with the refugee's or immigrant's entry or resettlement in this state. For refugees or immigrants who have continuously resided in this state since January 1, 2011, it is unclear who will provide information to FDLE, or when FDLE will have to conduct the screening, since the bill does not specify that those refugees and immigrants must be assisted by a person engaged with a resettlement program.

FDLE is authorized to cooperate and share information with federal agencies as may be expedient in conducting the background screening.

FDLE is required to submit a report, as soon as practicable, of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security. Within 10 days after submitting the report, FDLE must submit a separate report to the person who submitted the personal identifying information, unless directed otherwise by the Governor.

FDLE may also provide background screening information to any local law enforcement agency as directed by the Governor.

Gubernatorial Powers Applicable to Foreign Refugees or Immigrants

The bill authorizes the Governor to:

- Adopt emergency rules and permanent rules necessary to implement the bill;
- Adopt forms and procedures for the collection of personal identifying information required to be submitted to FDLE by the bill; and
- Exempt individuals or categories of individuals from this section in order to efficiently use departmental resources for public safety.

Fees Charged by FDLE

Any fees incurred by FDLE to process and retain personal identifying information and conduct a background screening of a foreign refugee or immigrant must be paid by the foreign refugee or immigrant subject to the background screening or by the person who engaged through a resettlement assistance program in assisting the foreign refugee or immigrant with entry into or resettlement in this state.

FDLE may not assess a fee higher than the lowest fee authorized under s. 943.053, F.S., which establishes fees for the dissemination of criminal justice information by FDLE. Because the bill does not define the scope of the required background screening or specify the personal identifying information that must be collected, the amount and type of fees that may be assessed by FDLE is indeterminate.

Additional Provisions

The bill provides a number of whereas clauses related to the subject of the bill. The bill also specifies that it supplements and does not limit any emergency or military powers otherwise authorized by law.

B. SECTION DIRECTORY:

Section 1 creates s. 943.0323, F.S., related to restricted persons and foreign refugees and immigrants.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill will have an indeterminate impact on state revenues as a result of the assessment of fees by FDLE.

   The bill requires FDLE to collect personal identifying information (PII) and conduct background screenings of foreign refugees and immigrants who use a public or private resettlement assistance program. The bill also requires a refugee or immigrant, or a person who assists a refugee or immigrant, to pay fees assessed by FDLE to process and retain the personal identifying information and conduct a background screening.

   Pursuant to Rule 11C-6.010 (5) of the Florida Administrative Code, the cost to retain fingerprints at the state level is $6 per applicant annually. The first year of retention is included in the cost of the state criminal history record check. The cost for a state and national criminal history record check is $38.75, of which $24 goes into the FDLE Operating Trust Fund. An accurate estimate of the potential increase of PII and background screenings cannot be quantified at this time.

2. Expenditures: The bill will have an indeterminate impact on state expenditures.

   The bill may result in increased workload due to the additional background screenings FDLE must conduct. The fees associated with such screenings would be paid by the foreign refugee or immigrant or those assisting in their relocation through a specified resettlement assistance program. Even with the revenue from the fees, according to FDLE, "these duties could not be absorbed with current resources."[22] The number of additional background screenings that would be required is unknown; therefore an exact cost cannot be accurately quantified at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to impact local government revenues.

2. Expenditures: The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill will have an indeterminate negative fiscal impact on private persons who are required to submit personal identifying information to FDLE regarding any foreign refugee or immigrant assisted with resettlement or entry into this state. The extent of the impact is unclear because the bill does not specify what information must be provided or the manner in which it must be provided.

   In addition, the bill will have an indeterminate negative fiscal impact on each foreign refugee or immigrant, or the private person who assisted the foreign refugee or immigrant with the entry or resettlement in this state, who must pay fees charged by FDLE to process and retain personal identifying information and conduct a background screening of the refugee or immigrant. However, because the bill does not specify the scope of the required background check or the extent of the personal identifying information required, the amount of fees that may be charged by FDLE is indeterminate.

D. FISCAL COMMENTS: None.

[22] Florida Department of Law Enforcement, *"FDLE Legislative Bill Analysis: HB 1095"*, January 26, 2016, On file with the House Justice Appropriations Subcommittee,

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Preemption

It appears that to the extent the bill attempts to regulate immigration, it may be precluded under principles of preemption, specifically field preemption, pursuant to the Supremacy Clause of the United States Constitution.[23] "Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."[24] While the United States Supreme Court has "never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted," it has found field preemption in certain core areas of immigration law, such as the field of alien registration and determining what aliens may be admitted into the country.[25] The Court has stated that the "[p]ower to regulate immigration," which it described as the power to "determin[e] who should or should not be admitted into the country, and the conditions under which a legal entrant may remain," is "unquestionably exclusively a federal power."[26] Consequently, it appears that only the federal government has the authority to decide which aliens should be admitted to the United States as refugees.[27]

Due Process and Equal Protection

The United States Supreme Court has held that the due process and equal protection clauses of the Fourteenth Amendment "encompass lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside."[28] Accordingly, statutory "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."[29] The Court has explained that "[a]liens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate [, thus] the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits."

Right to Travel

Freedom of movement and interstate travel has been recognized by the United States Supreme Court as a fundamental right under the United States Constitution since 1868.[30] The Court "has made it clear that, whatever may be the scope of the constitutional right of interstate travel, aliens

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[23] U.S. Const. art. VI, cl. 2. Field preemption occurs when Congress has determined to exercise exclusive authority and "displace state law altogether" in a particular field. *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012).

[24] *Arizona*, 132 S. Ct. at 2502.

[25] *DeCanas v. Bica*, 424 U.S. 351, 355 (1976); *Arizona*, 132 S. Ct. at 2502 ("the Federal Government has occupied the field of alien registration"); *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941) ("where the federal government, in the exercise of its superior authority in this field, has enacted . . . a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations"); *Toll v. Moreno*, 458 U.S. 1, 11 (1982) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States . . . .")

[26] 424 U.S. at 354-55; *see also Arizona*, 132 S. Ct. at 2498 ("The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens."); *Hines*, 312 U.S. at 62 (recognizing "the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation").

[27] *See* Op. Tenn. Att'y Gen. 15-17 (Nov. 30, 2015); *United States v. Alabama*, 691 F.3d 1269, 1295 (11th Cir. 2012) ("Congress intended that the Executive Branch determine who must be removed and who may permissibly remain. []Alabama has taken it upon itself to unilaterally determine that any alien unlawfully present in the United States cannot live within the state's territory, regardless of whether the Executive Branch would exercise its discretion to permit the alien's presence. This is not a decision for Alabama to make . . . .")

[28] *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 39, (1915); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948)).

[29] *Graham*, 403 U.S. at 371-72 (1971) (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 152—153, n. 4 (1938))

[30] *See Crandall v. Nevada*, 73 U.S. 35

lawfully within this country have a right to enter and abide in any State in the Union 'on an equality of legal privileges with all citizens under nondiscriminatory laws.'"[31]

Right to Privacy

The first sentence of Article I, Section 23, of the Florida Constitution reads, "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." The right is not limited to citizens of this state; rather, it applies broadly to every natural person. The Florida Supreme Court has concluded that Florida's constitutional right to privacy is much broader in scope than that of the Federal Constitution.[32] Florida's right to privacy protects two different types of interests. First, it protects individuals from government interference when they make personal decisions. Second, it protects persons from compelled disclosure of private information. It is unclear if the requirement to submit personal identifying information for each foreign refugee and immigrant who enters or resettles in this state comports with the constitutional right to privacy granted to every natural person.

Delegation of Legislative Authority to the Executive

The separation of powers doctrine prevents the Legislature from delegating its constitutional duty[33] to exercise policy-related discretion over the content of law.[34] The Florida Supreme Court, in *Askew v. Cross Key Waterways*,[35] acknowledged that "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine."[36] However, the court warned, when legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the Legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.[37] This bill delegates significant discretion to the Governor to implement the state's policy on the entry or resettlement of restricted persons and foreign refugees or immigrants in this state. However, it is unclear whether the bill provides standards sufficient to support the delegation of power to the Governor or guide the performance of his duties.

B. RULE-MAKING AUTHORITY: The bill authorizes the governor to adopt emergency and permanent rules necessary to implement the bill and to adopt forms and procedures for the collection of personal identifying information as required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records

The bill requires certain persons to provide FDLE with personal identifying information for each foreign refugee or immigrant who enters or resettles in this state with the assistance of a public or private resettlement program. The bill defines "personal identifying information" of a foreign refugee or immigrant as including passport information and fingerprints, addresses and geographical location of any temporary or permanent residence that has been or may be used, and *other information required by the Governor*. While the definition specifies certain specific types of information, such as address or

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[31] *Graham*, 403 U.S. at 377-7); *see Takahashi*, 334 U.S. at 420 ("The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws.")

[32] *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla. 1985).

[33] *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

[34] *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

[35] 372 So.2d 913 (Fla. 1978)

[36] Id. at 921 (quoting *CEEED v. California Coastal Zone Conservation Comm'n*, 43 Cal.App.3d 306, 325 (Cal. App. 4 Dist. 1974)).

[37] Id. at 918-19. See also *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla. 1968)(—[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.). See generally James P. Rhea and Patrick L. —Booterl Imhof, An Overview of the 1996 Administrative Procedure Act, 48 FLA. L. REV. 1 (1996); Dan R. Stengle and James P. Rhea, Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies, 21 FLA. ST. U. L. REV. 415 (1993); Stephen T. Maher, We're No Angels: Rulemaking and Judicial Review in Florida, 18 FLA. ST. U. L. REV. 767 (1991).

fingerprints, the list is not exhaustive. Therefore, the type or extent of personal identifying information that would be required by FDLE is unknown.

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records and guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.

There does not appear to be a public records exemption that encompasses all of the personal identifying information that FDLE may require regarding foreign refugees or immigrants. It is possible that an existing public records exemption will apply to particular pieces of personal identifying information held by FDLE, depending upon the type of information collected. However, if an existing exemption does not apply, personal identifying information submitted to FDLE for each foreign refugee and immigrant will be a public record and subject to inspection or copying upon request.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2016, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- revise the definition of "restricted person" to authorize the Governor to designate the locations from which a refugee or immigrant originates that classifies him or her as a "restricted person";
- add locations in which a foreign terrorist organization organizes, operates, or trains to the types of locations from which a refugee or immigrant originates that classifies him or her as a "restricted person";
- exempt immigrants and refugees from the western hemisphere who are currently in the state from the required background screening;
- make technical and stylistic changes.

On February 16, 2016, the Justice Appropriations Subcommittee adopted one amendment to the bill. The amendment:

- Clarifies that any fees charged by FDLE for conducting background screenings and processing and retaining personal identifying information of foreign refugees or immigrants pursuant to this bill, will be at the expense of said foreign refugee or immigrant, or person(s) assisting in their resettlement through a resettlement program.
- Limits the amount of fees charged by FDLE for these services to no higher than the minimum authorized under s. 943.053 F.S.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

A bill to be entitled

An act relating to prevention of acts of war; creating s. 943.0323, F.S.; providing definitions; prohibiting the state, political subdivisions, their agencies and employees, and persons receiving state funds from assisting with the entry into or resettlement in the state of certain foreign refugees and immigrants; requiring persons offering resettlement assistance to foreign refugees or immigrants through certain resettlement assistance programs to submit the personal identifying information of such refugees and immigrants to the Department of Law Enforcement; directing the department to conduct background screenings and report specified information to the Governor, the United States Department of Homeland Security, and certain persons; providing for the assessment and payment of fees relating to processing and retaining personal identifying information and conducting background screenings; authorizing the Governor to exercise certain powers, monitor the presence of certain persons entering into, resettling, or residing in the state, adopt rules and forms and procedures, and exempt individuals or categories of individuals from screenings and reports; authorizing the Governor and Attorney General to challenge specified federal laws and regulations; directing the

Governor and Attorney General to prevent the entry into or resettlement in the state of certain restricted persons; providing applicability; providing an effective date.

WHEREAS, since the entry into Florida of foreign persons who trained in the state and subsequently attacked the United States on September 11, 2001, Florida has remained under imminent threat of the surreptitious invasion of foreign persons intending to conquer or violently destroy the way of life for the citizens of the United States and its constituent states, and

WHEREAS, such persons are organized or affiliated with armies presently holding and administering territories outside the United States and insurgencies engaged in capturing such territories, and

WHEREAS, such persons have and may continue to find safe haven through alliances with foreign governments or the sympathies of nongovernmental organizations, and

WHEREAS, the State of Florida has sufficient sovereign power to defend itself against invasion or imminent threat of invasion pursuant to Section 10, Article I of the United States Constitution, and

WHEREAS, the State Constitution and Florida law fully empower the Governor, as commander-in-chief of all military forces in Florida not in active service of the United States

Armed Forces, including the general militia, to defend the state against the entry and actions of such persons, and

WHEREAS, principles of federalism applied in various United States Supreme Court decisions preclude the commandeering of state agencies in the pursuit of federal policies or in execution of federal law, except by consent of the state, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 943.0323, Florida Statutes, is created to read:

943.0323 Prevention of acts of war.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Foreign refugee or immigrant" means a person who is not a United States citizen but who seeks entry into or resettlement in the state.

(b) "Invader" means a person who is not a United States citizen who enters into or remains in the state with the intent of doing violence to persons or destroying property as part of any conspiracy or plan to:

1. Violently injure the way of life for citizens of the state;

2. Weaken or conquer all or any portion of the state or of the United States; or

3. Wage war against the United States to ally with its

enemies or provide comfort and aid to its enemies.

(c) "Personal identifying information" of a foreign refugee or immigrant includes passport information and fingerprints, addresses and geographical location of any temporary or permanent residence that has been or may be used, and other information required by the Governor under this section.

(d) "Restricted person" means a foreign refugee or immigrant for whom there is reasonable cause to believe that he or she originates from, or has been in close proximity to, any location designated by the Governor in which:

1. Invaders or prospective invaders are known to originate, organize, or train for violent acts of war; or

2. A foreign terrorist organization designated by the United States Secretary of State pursuant to 8 U.S.C. s. 1189 organizes, operates, or trains.

(2) NONCOOPERATION WITH ENTRY OR RESETTLEMENT OF RESTRICTED PERSONS.—

(a) The state or an agency or employee thereof, or a political subdivision of the state or an agency or employee thereof, may not cooperate with or assist any person, including a federal agent, with the entry into or resettlement in the state of a restricted person unless the Governor expressly authorizes such cooperation or assistance.

(b) A person who, on or after the effective date of this act, receives state funds for any purpose may not, for 5 years

after receiving such funds, assist with the entry into or resettlement in the state of a restricted person unless the Governor expressly authorizes such assistance.

(c) A person who, after the effective date of this act, assists with the entry into or resettlement in the state of a restricted person may not receive state funds for any purpose for 5 years after the most recent act of such assistance unless the Governor expressly authorizes such assistance.

(3) SCREENING OF FOREIGN REFUGEES AND IMMIGRANTS.—

(a) A person who, upon the effective date of this act, is engaged through a public or private resettlement assistance program in assisting with the entry into or resettlement in the state of a foreign refugee or immigrant, shall, within 30 days after the effective date of this act, submit to the department the personal identifying information of any foreign refugee or immigrant the person assisted before the effective date of this act, unless the foreign refugee or immigrant was born in the Western Hemisphere.

(b) A person who, after the effective date of this act, engages through any public or private resettlement assistance program in assisting with the entry into or resettlement in the state of a foreign refugee or immigrant, shall, upon agreeing to provide such assistance, submit to the department the personal identifying information of the foreign refugee or immigrant.

(c) A person who, before the effective date of this act, engaged through any public or private resettlement assistance

program in assisting with the entry into or resettlement in the state of a foreign refugee or immigrant, shall, within 90 days after the effective date of this act, submit to the department the personal identifying information of each such foreign refugee or immigrant currently residing in this state, unless the foreign refugee or immigrant was born in the Western Hemisphere.

(d)1. The department shall conduct a background screening of a foreign refugee or immigrant within 15 days after receipt of his or her personal identifying information pursuant to paragraph (a) or paragraph (b), within 30 days after receipt of his or her personal identifying information pursuant to paragraph (c), or within 90 days after receipt of his or her personal identifying information for any foreign refugee or immigrant continuously residing in the state since January 1, 2011. The department may cooperate and share information with federal agencies as may be expedient in conducting the background screening.

2. The department shall submit a report, as soon as practicable, of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security. Within 10 days after submitting such report, the Department of Law Enforcement shall submit a separate report to the person who submitted the personal identifying information, unless directed

otherwise by the Governor. The department may also provide background screening information to any local law enforcement agency as directed by the Governor.

(e) Any fees that must be assessed by the department to process and retain personal identifying information and conduct a background screening of a foreign refugee or immigrant pursuant to this subsection shall be paid by the foreign refugee or immigrant subject to the background screening or by the person who engaged through a public or private resettlement assistance program in assisting with the entry into or resettlement in the state of such foreign refugee or immigrant. The department may not assess under this paragraph a fee higher than the lowest fee authorized under s. 943.053.

(4) GUBERNATORIAL POWERS.—The Governor is authorized to:

(a) Use all powers and resources, including police powers, emergency powers, and military force, to prevent a restricted person from entering into or resettling in the state and to prevent a restricted person residing in the state from committing violent acts of war, unless the Governor has reasonable cause to believe that the restricted person is not an invader.

(b) Monitor the presence of a restricted person entering into, resettling in, or residing in the state.

(c) Adopt emergency rules and permanent rules necessary to implement this section.

(d) Adopt forms and procedures for the collection of

personal identifying information under this section.

(e) Exempt individuals or categories of individuals from this section in order to efficiently use departmental resources for public safety.

(5) ACTIONS TO PREVENT THE RESETTLEMENT OF RESTRICTED PERSONS.—

(a) The Governor and the Attorney General are independently authorized to review and challenge the lawfulness of any federal law or regulation encouraging or providing for the entry into or resettlement of restricted persons in the state.

(b) The Governor and the Attorney General are independently directed to take any action authorized by law to prevent the entry into or resettlement in the state of a restricted person by the Federal Government or any person unless the Governor has reasonable cause to believe that the restricted person is not an invader.

(6) APPLICABILITY.—This section supplements and does not limit any emergency or military powers otherwise authorized by law.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1195 Technology
SPONSOR(S): Government Operations Appropriations Subcommittee; Government Operations Subcommittee; Grant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Toliver	Williamson
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
3) State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

The Agency for State Technology (AST) is administratively housed within the Department of Management Services. The executive director of the AST, who serves as the state's chief information officer, is appointed by the Governor and confirmed by the Senate. Current law establishes positions within the AST and establishes the agency's duties and responsibilities.

The bill establishes the position of chief data officer (CDO) within the AST. The CDO is required to develop an enterprise data inventory that describes the data created or collected by a state agency and to recommend options and associated costs for developing and maintaining an open data catalog. Additionally, the CDO is required to recommend any potential methods for standardizing data across state agencies, identify what state agency data may be considered open data, and recommend open data technical standards and terminologies.

The bill requires the AST to collaborate with the Department of Highway Safety and Motor Vehicles to develop a plan that includes associated costs for implementing a secure and uniform system for issuing an optional digital proof of driver license. The plan must be submitted to the Governor and the Legislature by December 1, 2016.

The bill authorizes one full-time equivalent position and associated salary rate of 103,000 to the AST to implement this act. The bill does not appear to have an impact on local government or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2014, the Legislature created the Agency for State Technology (AST) within the Department of Management Services (DMS).[1] The executive director of the AST, who serves as the state's chief information officer, is appointed by the Governor and confirmed by the Senate.[2] The following positions are established within the AST, all of whom are appointed by the executive director:

- Deputy executive director, who serves as the deputy chief information officer;[3]
- Chief planning officer and six strategic planning coordinators;[4]
- Chief operations officer;[5]
- Chief information security officer;[6] and
- Chief technology officer.[7]

The AST's duties and responsibilities include:

- Developing and publishing information technology (IT) policy for management of the state's IT resources;
- Establishing and publishing IT architecture standards;
- Establishing project management and oversight standards for use by state agencies when implementing IT projects;
- Performing project oversight on all state agency IT projects with a total project cost of $10 million or more that are funded in the General Appropriations Act or any other law;
- Performing project oversight on any cabinet agency IT project with a total project cost of $25 million or more and that impacts one or more agencies;
- Providing operational management and oversight of the state data center;
- Recommending additional consolidations of agency data centers or computing facilities into the state data center;
- Identifying opportunities for standardization and consolidation of IT services that support business functions and operations that are common across state agencies;
- Establishing, in collaboration with the DMS, best practices for the procurement of IT products in order to reduce costs, increase productivity, or improve services;
- Participating with the DMS in evaluating, conducting, and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services;
- Developing standards for IT reports and updates for use by state agencies;
- Assisting state agencies, upon request, in developing IT related legislative budget requests; and
- Conducting annual assessments of state agencies to determine their compliance with all IT standards and guidelines developed and published by the AST.[8]

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[1] The AST is administratively housed within DMS as a separate budget program and is not subject to its control, supervision, or direction.
[2] Section 20.61(1)(a), F.S.
[3] Section 20.61(2)(a), F.S.
[4] Section 20.61(2)(b), F.S., requires one coordinator for each of the following major program areas: health and human services, education, government operations, criminal and civil justice, agriculture and natural resources, and transportation and economic development.
[5] Section 20.61(2)(c), F.S.
[6] Section 20.61(2)(d), F.S.
[7] Section 20.61(2)(e), F.S.
[8] Section 282.0051, F.S.

Effect of the Bill

The bill establishes the position of chief data officer (CDO) within the AST, who is appointed by the executive director of the agency.

The bill creates s. 282.319, F.S., regarding data catalogs. It requires the CDO to develop an enterprise data inventory that describes the data created or collected by a state agency, including data used in an agency's information systems, and to recommend options and associated costs for developing and maintaining an open data catalog. Additionally, the bill requires the CDO to, at a minimum:

- Establish a process and a reporting format for state agencies to provide to the CDO an inventory that describes all current datasets aggregated or stored by the agency;
- Recommend any potential methods for standardizing data across state agencies that will promote interoperability and reduce the collection of duplicative data;
- Identify what state agency data may be considered open data;
- Recommend open data technical standards and terminologies for use by state agencies; and
- Recommend options and all associated costs for the state to develop and maintain an open data catalog.

The bill defines terms for s. 282.319, F.S., including defining the term "open data" to mean data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public.

The bill also requires the AST to collaborate with the Department of Highway Safety and Motor Vehicles (DHSMV) to develop a plan that includes associated costs for implementing a secure and uniform system for issuing an optional digital proof of driver license pursuant to s. 322.032, F.S. The AST must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016.

B. SECTION DIRECTORY:

Section 1 amends s. 20.61, F.S., relating to the AST.

Section 2 creates s. 282.319, F.S., relating to the enterprise data inventory and the open data catalog.

Section 3 creates an unnumbered section requiring the AST to collaborate with the DHSMV to develop a plan for the issuance of an optional digital proof of driver license.

Section 4 authorizes one full-time equivalent position and associated salary rate.

Section 5 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill authorizes one full-time equivalent position and associated salary rate of 103,000 to the AST for Fiscal Year 2016-2017 to implement this act. On or after July 1, 2016, and pursuant to ch. 216, F.S., the AST may submit a budget amendment to transfer budget authority, if needed, into the Salaries and Benefits appropriation category within the Executive Direction and Support Services budget entity from other general revenue appropriations to provide budget authority for the CDO position established in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment relocated provisions establishing a data catalog and the assigning duties to the chief data officer to chapter 282, F.S., which relates to enterprise information technology services. It also clarified that the AST administers the data catalog. Finally, the amendment provided that the provisions of the bill amending The Florida Election Code are effective January 1, 2017.

On February 16, 2016, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. Specifically, the amendment:

- Established and clarified the duties of the chief data officer (CDO);
- Authorized one full-time equivalent position and associated salary rate of 103,000 to the AST for FY 2016-2017 for the newly established CDO position created in the act;
- Removed the requirement that local governments must participate in the development of a data catalog; and
- Removed language relating to the expansion of the use of voter interface devices to all individuals instead of persons with disabilities only.

The staff analysis is drafted to the bill as amended and passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to technology; amending s. 20.61, F.S.; establishing the chief data officer within the Agency for State Technology; creating s. 282.319, F.S.; requiring the chief data officer to develop an enterprise data inventory and provide recommendations for developing and maintaining an open data catalog; providing definitions; providing responsibilities of the chief data officer; requiring the agency to develop an implementation plan for issuing a digital proof of driver license; requiring the agency to submit the plan to the Governor and Legislature by a specified date; authorizing a position for the agency; authorizing the agency to submit a budget amendment; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (2) of section 20.61, Florida Statutes, to read:

20.61 Agency for State Technology.—The Agency for State Technology is created within the Department of Management Services. The agency is a separate budget program and is not subject to control, supervision, or direction by the Department of Management Services, including, but not limited to, purchasing, transactions involving real or personal property,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

personnel, or budgetary matters.

(2) The following positions are established within the agency, all of whom shall be appointed by the executive director:

(f) Chief data officer.

Section 2. Section 282.319, Florida Statutes, is created to read:

282.319 Data catalog.—

(1) In consultation with state agencies, the chief data officer shall develop an enterprise data inventory that describes the data created or collected by a state agency, including data used in an agency's information systems, and recommend options and associated costs for developing and maintaining an open data catalog that is machine readable, easily accessible, and usable by the public.

(2) As used in this section, the term:

(a) "Application programming interface" means a set of programming instructions and standards for accessing a web-based software application.

(b) "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted.

(c) "Data catalog" means a collection of descriptions of datasets.

(d) "Dataset" means an organized collection of related data held in an electronic format.

(e) "Machine readable" means data that is in a form that can be easily processed by a computer without human intervention.

(f) "Open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term "open data" does not include data that is restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations and data for which a state agency is statutorily authorized to assess a fee for its distribution.

(g) "State agency" has the same meaning as provided in s. 282.318.

(3) At a minimum, the chief data officer shall:

(a) Establish a process and a reporting format for state agencies to provide to the chief data officer an inventory that describes all current datasets aggregated or stored by the agency. The inventory shall include, but is not limited to:

1. The title and description of what information will be found in the dataset.

2. A description of how the data is maintained, including standards or terminologies used to structure the data.

3. Any existing or planned application programming interface used to publish the data, a description of the data contained in any such existing interface, and a description of the data expected to be contained in any currently planned interface.

(b) Recommend any potential methods for standardizing data across state agencies that will promote interoperability and reduce the collection of duplicative data.

(c) Identify what state agency data may be considered open data.

(d) Recommend open data technical standards and terminologies for use by state agencies.

(e) Recommend options and all associated costs for the state to develop and maintain an open data catalog.

(4) To complete the requirements identified in subsection (3), the chief data officer shall consider the data and information contained in the feasibility study completed pursuant to s. 30, chapter 2014-221, Laws of Florida.

Section 3. The Agency for State Technology, in collaboration with the Department of Highway Safety and Motor Vehicles, shall develop a plan that includes associated costs for implementing a secure and uniform system for issuing an optional digital proof of driver license pursuant to s. 322.032, Florida Statutes. The agency shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016.

Section 4. For the 2016-2017 fiscal year, one full-time equivalent position with associated salary rate of 103,000 is authorized for the Agency for State Technology for the purpose of implementing this act. On or after the effective date of this act, the Agency for State Technology may submit a budget

amendment pursuant to chapter 216, Florida Statutes, to transfer budget authority, if needed, into the Salaries and Benefits appropriation category within the Executive Direction and Support Services budget entity from other general revenue appropriations to provide budget authority for the chief data officer.

Section 5. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4049 Scrutinized Companies
SPONSOR(S): Combee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Moore	Williamson
2) Appropriations Committee	23 Y, 1 N	Delaney	Leznoff
3) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The State Board of Administration (SBA) has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and FRS Investment Plan, which represents approximately $153.8 billion, or 87.1 percent, of the $176.5 billion in assets managed by the SBA. The SBA's ability to invest the FRS assets is governed by a "legal list" of the types of investments and the total percentage that may be invested in each type. Currently, the SBA may invest up to 35 percent of any of its funds in foreign corporate securities and obligations.

The Protecting Florida's Investment Act (PFIA) requires the SBA to identify and divest from assets in foreign companies doing business in Iran and Sudan. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies on the list do not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

The PFIA specifies that the SBA may no longer scrutinize companies with certain business operations in Iran, may no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and must cease engagement, investment prohibitions, and divestment with respect to those companies upon the occurrence of certain actions by Congress or the President.

The bill repeals a provision requiring the SBA to cease scrutinizing and divesting of companies with certain business operations in Iran upon the occurrence of Congress or the President affirmatively and unambiguously declaring, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that such mandatory divestment interferes with the conduct of United States foreign policy.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA or board) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer, and the Attorney General. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,[1] which represent approximately $153.8 billion, or 87.1 percent, of the $176.5 billion in assets managed by the SBA, as of October 31, 2015.[2] The SBA also manages more than 30 other investment portfolios with combined assets of $22.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.[3]

Investments

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, taking into account all relevant substantive factors. A nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.[4]

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and the total percentage that may be invested in each type. Some "legal list" guidelines specific to the pension plan provide:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.
- No more than 25 percent of assets should be invested in notes issued by FHA-insured or VA-guaranteed first mortgages on real property, or foreign government general obligations.
- No more than 35 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 20 percent of assets should be invested in alternative investments.

State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.[5] The four main categories of sanctions resulting from designations under these acts

[1] Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.
[2] *See* State Board of Administration, *Performance Report to the Trustees*, October 31, 2015, *issued* December 15, 2015, p. 5-6, *available at* https://www.sbafla.com/fsb/Portals/Internet/Reports/20151031_Trustees_Performance_Reportrev.pdf.
[3] *Id.*
[4] Section 215.444, F.S.
[5] U.S. Department of State, *State Sponsors of Terrorism*, http://www.state.gov/j/ct/list/c14151.htm (last visited Jan. 21, 2016).

are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.[6]

The three countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Iran, Sudan, and Syria.[7]

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

Federal Divestment Laws

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010[8] (CISADA) authorizes states to divest – within specified boundaries – from companies that invest in Iran. CISADA provides in pertinent part:

> Authority to Divest—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (d) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran described in subsection (c).

Section (c) of CISADA specifies that a person[9] engages in investment activities in Iran if the person:

- Has an investment of $20,000,000 or more in the energy sector of Iran, including in a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- Is a financial institution that extends $20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.

CISADA specifies that the authorization for a state or local government to divest ends 30 days after the President certifies to Congress that the government of Iran no longer satisfies the requirements for designation as a state sponsor of terrorism and has ceased the pursuit, acquisition, and development of certain weapons.[10]

Protecting Florida's Investment Act

In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act (PFIA), which required the SBA to divest of companies with certain business operations in the countries of Sudan or Iran. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies"[11] that have

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[6] *Id.*

[7] *Id.*

[8] 22 U.S.C. ss. 8501-8551.

[9] The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. 1 U.S.C. s. 1.

[10] *See* 22 U.S.C. s. 8551(a).

[11] Section 215.473(1)(t), F.S., defines "scrutinized company" as a company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan , and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of

prohibited business operations in Sudan or Iran. Once a company is placed on the list, the SBA and its investment managers are prohibited from acquiring that company's securities and are required to divest the company's securities if the company does not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

The PFIA specifies that the SBA may no longer scrutinize companies with certain business operations in Iran, may no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and must cease engagement, investment prohibitions, and divestment with respect to those companies upon the occurrence of any of the following:

- The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
- The United States revokes all sanctions imposed against the government of Iran; or
- The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of companies with business operations in Iran interferes with the conduct of United States foreign policy.

Effect of Proposed Changes

The bill repeals the provision requiring the SBA to cease scrutinizing and divesting of companies with certain business operations in Iran upon the occurrence of Congress or the President affirmatively and unambiguously declaring, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that such mandatory divestment interferes with the conduct of United States foreign policy.

B. SECTION DIRECTORY:

Section 1 amends s. 215.471, F.S., relating to divesture by the SBA; Sudan; Iran.

Section 2 provides an effective date of July 1, 2016.

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oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to scrutinized companies; amending s. 215.473, F.S.; revising the conditions under which the public fund may no longer scrutinize certain companies with activities in the Iran petroleum energy sector; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (5) of section 215.473, Florida Statutes, is amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.—

(5) EXPIRATION.—This section expires upon the occurrence of all of the following:

(b) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraph (1)(u)4. and shall no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies if such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism; or

2. The United States revokes all sanctions imposed against the government of Iran~~; or~~

~~3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy~~.

Section 2. This act shall take effect July 1, 2016.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

PCS for HB 1037

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1037 Public Records/State Agency Information Technology Security Programs
SPONSOR(S): State Affairs Committee
TIED BILLS: CS/CS/CS/HB 1033 **IDEN./SIM. BILLS:** CS/SB 624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Toliver LT	Camechis

SUMMARY ANALYSIS

The Information Technology (IT) Security Act requires the Agency for State Technology (AST) and state agency heads to meet certain requirements relating to IT security. Currently, the IT Security Act provides public record exemptions for state agency comprehensive risk assessments, certain internal policies and procedures of state agencies, and the results of internal audits and evaluations.

The bill creates additional public record exemptions within the IT Security Act. It provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents are confidential and exempt from public records requirements. In addition, the bill provides that portions of risk assessments, evaluations, external audits, and other reports of a state agency's IT security program for the data, information, and IT resources of the state agency are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate the unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources.

The bill authorizes the release of the confidential and exempt records, and portions thereof, to certain entities.

The bill provides for retroactive application of the public record exemptions. It also provides that the exemptions repeal on October 2, 2021, unless reviewed and saved from repeal by the Legislature. Finally the bill provides a statement of public necessity as required by the Florida Constitution.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record exemptions for certain records relating to IT security; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.[2] The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.[3] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[4]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[5] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.[6]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

Information Technology Security Act

The Information Technology (IT) Security Act[8] requires the Agency for State Technology (AST)[9] and the heads of state agencies[10] to meet certain requirements to enhance the IT[11] security of state agencies. Specifically, the IT Security Act provides that the AST is responsible for establishing standards and processes consistent with generally accepted best practices for IT security and adopting

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] Section 119.15, F.S.
[6] Section 119.15(6)(b), F.S.
[7] Section 119.15(3), F.S.
[8] Section 282.318, F.S.
[9] The AST is administratively housed within the Department of Management Services, and is tasked with developing IT policy for management of the state's IT resources. *See* ss. 20.61 and 282.0051, F.S.
[10] The term "state agency" is defined to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(23), F.S.
[11] The term "information technology" is defined to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. Section 282.0041(11), F.S.

rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity.[12] In addition, the AST must:

- Develop, and annually update, a statewide IT security strategic plan;
- Develop and publish an IT security framework for state agencies;
- Collaborate with the Cybercrime Office within the Florida Department of Law Enforcement (FDLE) in providing training for state agency information security managers; and
- Annually review the strategic and operational IT security plans of executive branch agencies.[13]

The IT Security Act requires the head of each state agency[14] to designate an information security manager to administer the IT security program of the state agency.[15] In addition, the head of each state agency must annually submit to the AST the state agency's strategic and operational IT security plans; conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources are conducted.[16]

Current Public Record Exemptions under the IT Security Act

Currently, the IT Security Act provides that the following state agency information is confidential and exempt[17] from s. 119.07(1), F.S.:

- Comprehensive risk assessments;[18]
- Internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources;[19]
- The results of internal audits and evaluations.[20]

The confidential and exempt information must be disclosed to the Auditor General, the Cybercrime Office within FDLE, the AST, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.[21]

CS/CS/CS/HB 1033 (2016)

CS/CS/CS/HB 1033 makes several changes to the IT Security Act. In part, the bill requires:

- The AST to establish standards and processes consistent with best practices for both IT security and cybersecurity.
- The AST to develop and publish guidelines and processes for an IT security framework for use by state agencies.

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[12] Section 282.318(3), F.S.

[13] Section 282.318(3), F.S.

[14] The term "state agency" is defined to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(23), F.S. For purposes of the IT Security Act, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.318(2), F.S.

[15] Section 282.318(4)(a), F.S.

[16] Section 282.318(4), F.S.

[17] There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

[18] Section 282.318(4)(c), F.S.

[19] Section 282.318(4)(d), F.S.

[20] Section 282.318(4)(f), F.S.

[21] Section 282.318(4)(c), F.S.; s. 282.318(4)(f), F.S.

- Each state agency head to implement risk assessment remediation plans recommended by the AST.
- Each state agency head to report an IT security incident or breach to the Cybercrime Office within FDLE.

Effect of the Bill

The bill, which is linked to the passage of CS/CS/CS/HB 1033, creates additional public record exemptions within the IT Security Act. The bill provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public records requirements. In addition, the bill provides that portions of risk assessments, evaluations, external audits, and other reports of a state agency's IT security program for the data, information, and IT resources of the state agency, which are held by a state agency, are confidential and exempt from public records requirements. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate the unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
  - Information relating to the security of the state agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to the state agency's existing or proposed IT systems.

For purposes of the public record exemptions, the term "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

The confidential and exempt records, and portions thereof, must be made available to the Auditor General, the AST, the Cybercrime Office within FDLE, and, for those agencies under the jurisdiction of the Governor, the Chief Inspector General. The bill further provides that the confidential and exempt records, and portions thereof, may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.

The bill provides for retroactive application of the public record exemptions.[22] It also provides for repeal of the exemptions on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. Finally, the bill provides a public necessity statement as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 282.318, F.S., relating to security of data and IT.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon the passage of CS/CS/CS/HB 1033 or similar legislation.

[22] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438, 441 (Fla. 2001).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill could have a minimal fiscal impact on state agencies because staff responsible for complying with public records requests may require training related to creation of the public record exemptions. In addition, agencies could incur costs associated with redacting the confidential and exempt records prior to release. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of state agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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 affect county or municipal governments.

2. Other:

   Vote Requirement
   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record exemptions; therefore, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record exemptions; therefore, it includes a public necessity statement.

   Breadth of Exemption
   Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill creates public record exemptions for certain state agency records, and portions thereof, related to IT security. The release of such records could result in the identification of vulnerabilities or gaps in a state agency's IT security system or process and thereby increase the risk of an IT security incident or breach. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to public records; amending s. 282.318, F.S.; creating exemptions from public records requirements for certain records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents and for certain portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology program; authorizing disclosure of confidential and exempt information to certain agencies and officers; providing for retroactive application; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) of subsection (4) of section 282.318, Florida Statutes, is amended, present subsection (5) of that section is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

282.318 Security of data and information technology.—

(4) Each state agency head shall, at a minimum:

(i) Develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is ~~that are~~ consistent with the security rules, guidelines, and processes established by the Agency for State Technology.

1. All information technology security incidents and breaches must be reported to the Agency for State Technology.

2. For information technology security breaches, state agencies shall provide notice in accordance with s. 501.171.

3. Records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which includes:

(I) Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

Such records shall be available to the Auditor General, the Agency for State Technology, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) The portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's

technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

Such portions of records shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. For purposes of this subsection, "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1)(a) The Legislature finds that it is a public necessity that public records held by a state agency which identify detection, investigation, or response practices

for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which includes:

a. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(b) Such records shall be made confidential and exempt for the following reasons:

1. Records held by a state agency which identify information technology detection, investigation, or response practices for suspected or confirmed information technology incidents or breaches are likely to be used in the investigation of the incident or breach. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before completion of an active investigation could

jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information not otherwise exempt or confidential and exempt from public records requirements under any other law. Such information could be used for the purpose of identity theft or other crimes. In addition, release of such information could subject possible victims of the incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in a state agency's data security could compromise the future security of that agency or other entities if such information were available upon conclusion of an investigation or once an investigation ceased to be active. The disclosure of such a record or information could compromise the security of state agencies and make those state agencies susceptible to future data incidents or breaches.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the

marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital governmental programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies. The Legislature further finds that this public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency which are held by a state agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which includes:

a. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(b) The Legislature finds that it may be valuable, prudent, or critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the state agency's information technology program or related systems. Such documents would likely include an analysis of the state agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities. The disclosure of such portions of records would jeopardize the information technology security of the state agency, and compromise the integrity and availability of agency data and information technology resources, which would significantly impair the administration of governmental programs. It is necessary that such portions of records be made confidential and exempt from public records requirements in order to protect agency technology systems, resources, and data. The Legislature further finds that this public records exemption shall be given retroactive application because it is remedial in nature.

Section 3. This act shall take effect upon becoming a law, if CS/CS/CS/HB 1033 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.