# Natural Resources & Public Lands Subcommittee

December 6, 2017
1:30 PM – 3:30 PM
12 HOB

# Meeting Packet

**Richard Corcoran**
**Speaker**

**Holly Raschein**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**(AMENDED 12/4/2017 12:35:41PM)**

**Amended(1)**

## Natural Resources & Public Lands Subcommittee

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|---|---|
| **Start Date and Time:** | Wednesday, December 06, 2017 02:00 pm |
| **End Date and Time:** | Wednesday, December 06, 2017 03:30 pm |
| **Location:** | 12 HOB |
| **Duration:** | 1.50 hrs |

**Consideration of the following bill(s):**

HB 145 Nonnative Animals by Beshears
HB 405 Linear Facilities by Williamson, Payne
HB 469 Salvage of Pleasure Vessels by Harrison
HB 703 Water Management District Surplus Lands by Burgess
HB 705 Pub. Rec./Water Management District Surplus Lands by Burgess

**NOTICE FINALIZED on 12/04/2017 12:35PM by Larson.Lisa**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 145 Nonnative Animals
**SPONSOR(S):** Beshears
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 168

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Natural Resources & Public Lands Subcommittee | | Gregory | Shugar |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | | |
| 3) Government Accountability Committee | | | |

### SUMMARY ANALYSIS

Nonnative species are animals living outside of captivity that did not historically occur in Florida. Humans introduced most nonnative species to Florida, while some nonnative species migrated to Florida through natural range expansion. Nonnative species may become invasive species soon after introduction or years after they expand their range. These species may cause ecological problems, cause economic damage, create nuisances, or harm infrastructure. Currently, the Fish and Wildlife Conservation Commission (FWC) undertakes several statewide efforts to restrict the introduction and spread of nonnative species. This includes providing public education, pet amnesty days to surrender exotic pets to pre-qualified adopters, restricting or prohibiting the possession of certain nonnative species, undertaking nonnative species eradication programs, and encouraging hunting and fishing of nonnative species.

The bill specifically addresses concerns with the following priority invasive species:

- Tegu lizards;
- Lionfish; and
- Conditional nonnative lizards and snakes, which are Burmese or Indian pythons, reticulated pythons, Northern African pythons, Southern African pythons, Amethystine or scrub pythons, Green Anacondas, and Nile monitors.

The bill requires FWC to establish a pilot program to mitigate the impacts of priority invasive species by authorizing FWC to enter into competitively bid contracts with individuals and entities to capture and destroy the priority invasive species found on public lands and public waters. The bill requires FWC to:

- Ensure that each animal captured and killed is documented, photographed, and the geographic location is recorded for research purposes;
- Direct the disposal of all animals captured and not destroyed; and
- Submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representative by January 1, 2021.

The bill also requires pet dealers to implant a passive integrated transponder (PIT) tag in all nonnative animals identified by FWC that threaten the state's wildlife habitat before selling, reselling, or offering for sale such animals. FWC must adopt rules that identify such animals and establish standards for the type of PIT tag that pet dealers must use and the method used to implant the tags.

Lastly, the bill appropriates $300,000 in nonrecurring from the Land Acquisition Trust Fund for both fiscal years 2018-2019 and 2019-2020 to implement the pilot program.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**PRESENT SITUATION**

Nonnative Species

Nonnative species (or exotic species) are animals living outside of captivity that did not historically occur in Florida. Humans introduced most nonnative species to Florida, while some nonnative species migrated to Florida through natural range expansion. Common examples of nonnative species include coyotes, armadillos, parrots, feral hogs, and different species of insects. Only a handful of escaped or released nonnative species survive. The majority of those who do survive likely will not cause a negative effect on native wildlife. The Fish and Wildlife Conservation Commission (FWC) maintains a list of nonnative species on its website.[1]

Nonnative species may become invasive species soon after introduction or years after they expand their range. These species may cause ecological problems, cause economic damage, create nuisances, or harm infrastructure.[2]

FWC undertakes several statewide efforts to restrict the introduction and spread of nonnative species. This includes providing public education, pet amnesty days to surrender exotic pets to pre-qualified adopters,[3] restricting or prohibiting the possession of certain nonnative species, undertaking nonnative species eradication programs, and encouraging hunting and fishing of nonnative species.

Individuals may not transport into the state, introduce, or possess, for any purpose that might reasonably be expected to result in liberation into the state, any nonnative species without a permit from FWC.[4] Individuals who possess these species must meet requirements set by FWC including certain captivity requirements to prevent escape, identification requirements, record keeping requirements, inspection requirements, transportation requirements, disaster incident plans, and detailed research plans.[5]

Individuals may hunt and fish all nonnative freshwater aquatic life and animal life throughout the year, without restriction, unless otherwise specified in FWC rules.[6]

Tegus

Argentine black and white tegus (tegus) are large lizards native to South America. Tegus are black and white with banding along the tail. Tegus may reach up to four feet in length. These lizards spend most of their time on land, though they can swim and may submerge themselves for long periods. Tegus are primarily active during the day and will burrow or hide overnight. Their diet includes fruits, eggs, inspects, and small animals such as lizards and rodents.[7]

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[1] FWC, *What is a nonnative species?*, http://myfwc.com/wildlifehabitats/nonnatives/what-are-nonnatives/ (last visited September 25, 2017); FWC, *Exotic Information*, http://myfwc.com/wildlifehabitats/nonnatives/exotic-information/ (last visited September 25, 2017).
[2] FWC, *Invasive Species*, http://myfwc.com/wildlifehabitats/nonnatives/invasive-species/ (last visited September 25, 2017); FWC, *Exotic Information*, http://myfwc.com/wildlifehabitats/nonnatives/exotic-information/ (last visited September 25, 2017).
[3] FWC, *Exotic Pet Amnesty Day Events*, http://myfwc.com/wildlifehabitats/nonnatives/amnesty-program/events/ (last visited September 25, 2017); r. 68-5.004, F.A.C.
[4] Section 379.231(1), F.S.; r. 68-5.001(1), F.A.C. Four specific species are exempt from these prohibitions.
[5] Rules 68-5.001(3) & (4), F.A.C.
[6] Rule 68-5.001(2), F.A.C.
[7] FWC, *Argentine black and white tegu*, http://myfwc.com/wildlifehabitats/nonnatives/reptiles/argentine-black-and-white-tegu/ (last visited February 13, 2017).

FWC has identified tegus in several areas of Florida. Two breeding populations of tegus are known to exist in Hillsborough and Miami-Dade Counties.[8] These nonnative lizards present a concern because they compete with and prey on native wildlife, including threatened species. Individuals must possess a permit from FWC to sell tegus.[9] Currently, FWC works with other agencies and organizations to assess the threat of tegus and develop management strategies, including targeted trapping and removal. The goal of these partnerships is to minimize the impact of tegus on native wildlife and natural areas.[10] FWC encourages individuals who see tegus to report their location.[11] FWC's cooperative efforts have removed over 4000 tegus from Florida.[12]

Lionfish

Lionfish are a marine species identifiable by their red, brown, and white striped zebra-like appearance and 18 venomous spines. Lionfish may grow to 18 inches in length where they are not indigenous. These marine predators use their spines defensively against larger predators.[13]

Lionfish stalk their prey and corral them into corners. A lionfish diet may include yellowtail snapper, Nassau grouper, parrotfish, banded coral shrimp, and cleaner species. Once lionfish find suitable habitat as an adult, they tend to stay and can reach densities of more than 200 adults per acre.[14]

Lionfish were first reported in Florida waters near Dania Beach in 1985. By 2014, lionfish spread throughout the southern Atlantic, Gulf Coast, and Caribbean.[15] Lionfish pose problems for the marine environment because they eat native fish, eliminate species that serve important ecological roles such as keeping algae in check on reefs, and compete for food with native predatory fish like grouper and snapper.[16]

FWC places several restrictions on the possession of lionfish. Individuals may not import live lionfish, hybrids, or eggs.[17] Wholesale and retail dealers may only possess lionfish harvested from Florida waters or adjacent federal waters.[18] Common carriers or employees of carriers may not carry, knowingly receive for carriage, or permit the carriage of any live lionfish, including their hybrids or eggs, except for lionfish lawfully harvested from Florida waters or adjacent federal waters.[19] Individuals may only possess lionfish for the purpose of destruction, unless permitted by FWC.[20] Further, individuals may not breed lionfish or cultivate their larvae or eggs, unless permitted by FWC.[21]

FWC undertakes many activities to control the lionfish population, including:

- Partnering with dive shops to train divers to confidentially and safely harvest lionfish;[22]
- Encouraging lionfish excursions and derbies;[23]

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[8] FWC presentation on Bears, Lionfish, Tegus, and Pythons, p. 23, Agriculture and Natural Resources Appropriations Subcommittee, February 15, 2017, available at: http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2893&Session=2017&DocumentType=Meeting Packets&FileName=anr 2-15-17.pdf.

[9] Section 379.3761, F.S.

[10] FWC, *Tegus in Florida*, http://myfwc.com/media/2380549/Tegu-brochure.pdf (last visited September 25, 2017).

[11] *Id.*

[12] FWC, supra note 8.

[13] FWC, *Lionfish – Pterois volitans*, http://myfwc.com/wildlifehabitats/nonnatives/marine-species/lionfish/ (last visited September 25, 2017).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Rules 68-5.005(2) and 68B-5.006(5), F.A.C.

[18] Rule 68-5.005(4), F.A.C.

[19] Rule 68-5.005(5), F.A.C.

[20] Rules 68-5.005(7) and 68B-5.006(7), F.A.C.

[21] Rules 68-5.005(8) and 68B-5.006(6), F.A.C.

[22] FWC, *Lionfish Derby and Event Calendar*, http://myfwc.com/fishing/saltwater/recreational/lionfish/events/ (last visited September 25, 2017).

- Performing research to assess lionfish populations and develop management plans;[24]
- Undertaking a lionfish summit in 2013 to develop a collaborative framework for partnering on future lionfish management that includes identification of research priorities, management actions and outreach initiatives;[25] and
- Encouraging individuals to report lionfish sightings.[26]

Further, FWC provides exceptions to certain marine fishing regulations to encourage fishing for lionfish, including:

- Exempting divers who harvest lionfish from the recreational fishing license requirements if they use certain gear;[27]
- Allowing recreational divers to harvest an unlimited amount of lionfish;[28]
- Allowing recreational divers to use rebreathers when harvesting lionfish;[29] and
- Allowing the take of lionfish in John Pennekamp State Park.[30]

Since May 2016, FWC's cooperative efforts have removed 110,786 lionfish from Florida water.[31]

Conditional Nonnative Snakes and Lizards

Individuals and businesses may not keep, possess, import into the state, sell, barter, trade, or breed the following snakes and lizards listed in s. 379.372(2)(a), F.S., for personal use or for sale for personal use: Burmese or Indian python, reticulated python, Northern African python, Southern African python, amethystine or scrub python, green anaconda, or Nile monitor.[32]

Reptile dealers, public exhibitors, researchers, or nuisance trappers may apply for a permit to import or possess conditional nonnative snakes and lizards.[33] Those who possess conditional nonnative snakes and lizards must keep them indoors or in outdoor enclosures with a fixed roof and a permanent passive integrated transponder (PIT) tag, also known as a microchip.[34] Owners of such species must submit a Captive Wildlife Disaster and Critical Incident Plan to the commission and must maintain records of their inventory.[35]

These conditional nonnative lizards and snakes are native to Africa and Asia. They prey on a variety of birds, mammals, and reptiles, including alligators. Each species of snake or lizard has been observed throughout Florida, but concentrate mainly in south Florida.[36]

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[23] *Id.*
[24] FWC, *Fish and Wildlife Research Institute*, http://myfwc.com/research/saltwater/fish/lionfish/ (last visited September 25, 2017).
[25] FWC, *2013 Lionfish Summit*, http://myfwc.com/fishing/saltwater/recreational/lionfish/summit/ (last visited September 25, 2017).
[26] FWC, *Report Lionfish*, http://myfwc.com/media/4039504/LionfishBrochure.pdf (last visited September 25, 2017).
[27] Rule 68B-5.006(2), F.A.C.
[28] Rule 68B-5.006(3), F.A.C.
[29] Rules 68B-4.012 and 68B-5.006(4), F.A.C.
[30] Rule 68B-5.002(2)(h), F.A.C.
[31] FWC presentation on Bears, Lionfish, Tegus, and Pythons, p. 18, Agriculture and Natural Resources Appropriations Subcommittee, February 15, 2017, available at: http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2893&Session=2017&DocumentType=Meeting Packets&FileName=anr 2-15-17.pdf.
[32] Rule 68-5.002(4), F.A.C.
[33] Rules 68-5.001 and 68-5.002, F.A.C.; FWC, *Conditional Snakes and Lizards*, http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/ (last visited September 25, 2017)
[34] Rule 68-5.001(3)(e), F.A.C.; FWC, *Conditional Snakes and Lizards*, http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/ (last visited September 25, 2017)
[35] *Id.*
[36] FWC, *Nonnatives - Burmese Python* http://myfwc.com/wildlifehabitats/nonnatives/reptiles/burmese-python/ (last visited September 25, 2017); FWC, *Nonnatives - Nile Monitor* http://myfwc.com/wildlifehabitats/nonnatives/reptiles/nile-monitor/ (last visited September 25, 2017); FWC, *Northern African Python*, http://myfwc.com/wildlifehabitats/nonnatives/reptiles/northern-african-python/ (last visited September 25, 2017).

Because of their large size as adults, conditional nonnative snakes and lizards living in Florida have few predators. While they may prey upon other nonnative species, they also prey upon native species and may reduce local native populations. Further, some conditional nonnative snakes and lizards may pose a threat to human and pet safety.[37]

FWC undertakes many activities to control the population of conditional snakes and lizards, including:

- Encouraging individuals to report sightings;[38]
- Managing a Burmese Python Removal Program the allows that capture of all conditional reptile species;[39]
- Authorizing python hunting within wildlife management areas;[40] and
- Hosting Python Challenges in 2013 and 2016 that offered rewards for harvesting pythons.[41]

FWC's cooperative efforts have removed nearly 5,000 pythons from Florida.[42]

Wildlife Management Areas

Wildlife Management Areas (WMAs) are public lands managed, or cooperatively managed with other government agencies, by FWC for the enjoyment of anglers, hunters, wildlife viewers, and boaters.[43] FWC manages approximately 5.8 million acres of WMA.[44] To hunt in a WMA, individuals must possess a hunting license, a WMA permit, and possibly other permits depending on the species or season.[45] Further, each individual WMA may have special regulations for particular areas or species. For example, in J.W. Corbert WMA:

- Conditional nonnative snakes and lizards may be taken after the last day of small game season through the second Sunday in April and during established seasons for the taking of game animals or alligators, and only by persons properly licensed and permitted to take game animals or alligators;
- Guns are a prohibited method of take for conditional nonnative snakes and lizards, except when the use of guns to take game or alligators is authorized and after the last day of small game season through the second Sunday in April when all legal methods of take for game animals or alligators are allowed, except the use of centerfire rifles is prohibited;
- Conditional nonnative snakes and lizards may not be removed from the WMA alive;
- Persons that take any conditional nonnative snakes and lizards must report the take within 36 hours and provide all data requested; and
- The day after small game season ends through the second Sunday in April shooting hours for conditional nonnative snakes and lizards is 1/2 hour before sunrise until 1/2 hour after sunset.[46]

The following WMAs allow python hunting: Everglades and Francis S. Taylor WMA, Holey Land WMA, Rotenberger WMA, Big Cypress WMA, Picayune Strand WMA, Rocky Glades Public Small Games Hunting Area, and Southern Glades Wildlife and Environmental Area.[47]

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[37] *Id.*
[38] *Id.*
[39] FWC, *Python Removal Program*, http://myfwc.com/license/wildlife/nonnative-species/python-permit-program/ (last visited September 25, 2017).
[40] *Id.*
[41] FWC, *2016 Python Challenge*, http://pythonchallenge.org/ (last visited September 25, 2017).
[42] FWC presentation on Bears, Lionfish, Tegus, and Pythons, p. 29, Agriculture and Natural Resources Appropriations Subcommittee, February 15, 2017, available at: http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2893&Session=2017&DocumentType=Meeting Packets&FileName=anr 2-15-17.pdf.
[43] FWC, *What are Wildlife Management Areas?*, http://myfwc.com/viewing/recreation/wmas/ (last visited September 25, 2017).
[44] *Id.*
[45] Section 379.354(1), F.S.; r. 68A-15.004, F.A.C.; FWC, *WMA Brochures*, http://myfwc.com/hunting/wma-brochures/ (last visited September 25, 2017).
[46] Rule 68A-15.064(2)(d), F.A.C.

## EFFECT OF THE PROPOSED CHANGES

The bill creates s. 379.2311, F.S., to require FWC to establish a pilot program to mitigate the impacts of priority invasive species on the public lands and waters of the state. The bill defines the term "priority invasive species" to include:

- Lizards of the genus *Tupinambis*, known as Tegu lizards;
- Conditional nonnative snakes and lizards identified in s. 379.372(2), F.S.;[48]
- *Pterois volitans*, also known as red lionfish; and
- *Pterois miles*, also known as the common lionfish or devil firefish.

The bill finds that priority invasive species continue to expand their range and to decimate the fauna and flora of the Everglades and other natural areas, waters, and ecosystems of this state at an accelerating rate. The goal of the pilot program is to examine the benefits of using strategically deployed, trained private contractors to slow the advance of the priority invasive species and to contain and eradicate these species from Florida.

The bill authorizes FWC to enter competitively bid contracts with individuals and entities to capture and destroy priority invasive species on public lands and public waters. The bill requires that:

- Any private contracted work performed on public land or in waters of the state not owned or managed by FWC have the consent of the owner;
- FWC ensure that each priority invasive species captured and killed is documented, photographed, and the geographic location is recorded for research purposes;
- FWC direct the disposal of all animals captured and not destroyed in removal efforts; and
- FWC submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representative by January 1, 2021.

The bill also requires pet dealers to implant a passive integrated transponder (PIT) tag in all nonnative animals identified by FWC that threaten the state's wildlife habitat before selling, reselling, or offering for sale such animals. The bill defines the term "pet dealer" to include any person who, in the ordinary course of business, engages in the sale of more than 20 animals per year to the public, including breeders who sell animals directly to the public. FWC must adopt rules that identify such animals and adopt standards for the type of PIT tag that pet dealers must use and the method used to implant the tags.

Lastly, the bill appropriates $300,000 in nonrecurring funds from the Land Acquisition Trust Fund for both fiscal years 2018-2019 and 2019-2020 to implement the pilot program.

B. SECTION DIRECTORY:

**Section 1.** Creates s. 379.2311, F.S., relating to nonnative animal management.

**Section 2.** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[47] FWC, *Python Removal Program*, http://myfwc.com/license/wildlife/nonnative-species/python-permit-program/ (last visited September 25, 2017).
[48] Section 379.372(2)(a), F.S.; r. 68-5.002(4), F.A.C.

None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on the FWC by requiring the agency to develop and implement a pilot program for contracted hunting and fishing to mitigate the impacts of tegus, lionfish, and conditional nonnative snakes and lizards.

   The bill will have a significant negative fiscal impact on FWC because the commission must adopt rules because of the statutory changes in the bill. Further, FWC must submit a report of findings and recommendations regarding implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representative by January 1, 2021.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on entities or individuals by authorizing FWC to contract with entities or individuals to capture or destroy priority invasive species on public lands and public waters.

The bill may have an indeterminate negative fiscal impact on pet dealers by requiring them to implant a PIT tag on species identified by FWC that threaten the state's wildlife habitats before selling, reselling, or offering for sale any such species.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt rules that identify nonnative animals that threaten the state's wildlife habitat and establish standards for the type of PIT tag that pet dealers must implant in such animals and the method used to implant the tags.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the terms "priority invasive species," "nonnative animals," and "animals" interchangeably. It is not clear whether these distinctions are intentional. If the distinctions are not intentional, then one phrase should be chosen to ensure consistent application of the bill.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to nonnative animals; creating s. 379.2311, F.S.; defining the terms "pet dealer" and "priority invasive species"; providing legislative findings; requiring the Fish and Wildlife Conservation Commission to establish a pilot program for the eradication of priority invasive species; providing the goal of the pilot program; authorizing the commission to enter into specified contracts; specifying parameters for the implementation of the pilot program; specifying procedures for the capture and disposal of animals that belong to priority invasive species; requiring the commission to submit a report to the Governor and the Legislature by a specified date; requiring animals that belong to certain nonnative species to be implanted with a passive integrated transponder tag before sale, resale, or being offered for sale by a pet dealer; requiring the commission to adopt rules; providing appropriations; providing an effective date.

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

Section 1. Section 379.2311, Florida Statutes, is created to read:

379.2311 Nonnative animal management.—

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

(a) "Pet dealer" means any person who, in the ordinary course of business, engages in the sale of more than 20 animals per year to the public. This term includes breeders who sell animals directly to consumers.

(b) "Priority invasive species" means the following species:

1. Lizards of the genus *Tupinambis*, also known as tegu lizards;

2. Species identified in s. 379.372(2)(a);

3. *Pterois volitans*, also known as red lionfish; and

4. *Pterois miles*, also known as the common lionfish or devil firefish.

(2) The Legislature finds that priority invasive species continue to expand their range and to decimate the fauna and flora of the Everglades and other natural areas and ecosystems in the southern and central parts of the state at an accelerating rate. Therefore, the commission shall establish a pilot program to mitigate the impact of priority invasive species on the public lands or waters of this state.

(a) The goal of the pilot program is to examine the benefits of using strategically deployed, trained private contractors to slow the advance of priority invasive species, contain their populations, and eradicate them from this state.

(b) In implementing the pilot program, the commission may enter into contracts in accordance with chapter 287 with entities or individuals to capture or destroy animals belonging to priority invasive species found on public lands or in the waters of this state. Any private contracted work to be performed on public land or in the waters of the state not owned or managed by the commission must have the consent of the owner.

(c) The commission shall ensure that all captures and disposals of animals that belong to these priority invasive species are documented and photographed and that the geographic location of the take is recorded for research purposes. The commission shall direct the disposal of all animals captured and not destroyed in removal efforts.

(d) The commission shall submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2021.

(3) Before selling, reselling, or offering for sale any nonnative animal identified by the commission pursuant to paragraph (a), pet dealers must implant in the animal, or have the animal implanted with, a passive integrated transponder (PIT) tag, as specified by the commission. The commission shall adopt rules to implement this subsection, including both of the following:

(a) The identification of nonnative animals that threaten

the state's wildlife habitats and, therefore, must be implanted with a PIT tag.

(b) The adoption of a standard for the types of PIT tags which must be used by pet dealers and the manner in which they must be implanted.

Section 2. For the 2018-2019 and 2019-2020 fiscal years, the sum of $300,000 in nonrecurring funds is appropriated each year from the Land Acquisition Trust Fund to the Fish and Wildlife Conservation Commission for the purpose of implementing s. 379.2311.

Section 3. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 145 (2018)

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: Natural Resources & Public Lands Subcommittee

Representative Beshears offered the following:

**Amendment (with title amendment)**

Remove lines 27-32 and insert:

(1) As used in this section, the term "priority invasive species" means the following

Remove lines 68-80

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

Remove lines 15-19 and insert:

specified date; providing

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 405 Linear Facilities
**SPONSOR(S):** Williamson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 494

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 11 Y, 1 N | Keating | Keating |
| 2) Natural Resources & Public Lands Subcommittee | | Moore | Shugar |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

The Florida Electrical Power Plant Siting Act (PPSA) and the Florida Electric Transmission Line Siting Act (TLSA) establish centrally coordinated review processes for state and local permitting of certain electrical power plants and transmission lines. Under the PPSA, an application for certification of a site for a power plant and associated facilities must include a statement on the consistency of the site, and any associated facilities that constitute "development," with existing land use plans and zoning ordinances. Certain activities are excluded from the definition of development. Further, the PPSA and the TLSA authorize the establishment of conditions in an order granting certification, though both state that they do not affect in any way the ratemaking powers of the Public Service Commission (PSC).

In 2016, the Third District Court of Appeal (Court) determined that transmission lines associated with a proposed power plant under the PPSA constitute "development" and, thus, require review for consistency with existing local land use plans and zoning ordinances. This decision conflicts with the historical interpretation and application of the PPSA by administrative tribunals in Florida. Further, the Court determined that the siting board empowered by the PPSA would not infringe on the PSC's exclusive ratemaking jurisdiction if the siting board were to require, as a condition of certification, that a utility install such transmission lines underground at its own expense.

The bill appears to make the law consistent with the historical interpretation of the PPSA by amending two of the items excluded from the definition of "development" in relation to the PPSA:

- The bill provides that the exclusion for work done on established rights-of-way applies to established rights-of-way and corridors and to rights-of-way and corridors *to be established*.
- The bill provides that the exclusion for the creation of specified types of property rights applies to creation of distribution and transmission corridors.

The bill makes identical changes to the definition of "development" in the Florida Local Government Development Agreement Act.

The bill also establishes the standard to be used in authorizing variances in a site certification under the PPSA and under the TLSA. Further, the bill provides that the PPSA and the TLSA do not affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

The bill does not appear to impact state or local government revenues or expenditures.

The bill provides that it will become effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

The Florida Electrical Power Plant Siting Act[1] (PPSA) and the Florida Electric Transmission Line Siting Act[2] (TLSA) establish centrally coordinated review processes for state and local permitting of certain electrical power plants and transmission lines. These laws recognize the broad interests of the public that are addressed by various governmental bodies and agencies as well as the critical nature of the infrastructure at issue.[3] These laws intend to further the legislative goal of ensuring, through available and reasonable methods, that the location and operation of electrical power plants and transmission lines will produce minimal adverse effects on the environment and the public health, safety, and welfare and will not unduly conflict with the goals established by the applicable local comprehensive plans.[4] Both laws establish the Governor and Cabinet as the siting board responsible for approving or denying certification.[5]

*Application of Local Land Use and Development Laws*

Under the PPSA, an application for certification of a site for a power plant and associated facilities[6] must include a statement on the consistency of the site, and any associated facilities that constitute "development," with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of the consistency.[7] The application must identify those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the Community Planning Act provisions of ch. 163 and s. 380.04(3), F.S. Each affected local government must file a determination of the consistency of the site and non-exempt associated facilities with existing land use plans and zoning ordinances in effect on the date the application was filed. Any substantially affected person may file a petition with the designated administrative law judge (ALJ) to dispute the local government's determination.[8] If a petition is filed, the ALJ must hold a land use hearing at which the sole issue for determination is whether the proposed site or non-exempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.[9]

Associated facilities that do not constitute "development" are not subject to the land use consistency and compliance requirements. For purposes of this determination, "development" is defined in s. 380.04, F.S., and expressly excludes the following activities, among others:

- Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on

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[1] ss. 403.501-403.518, F.S.
[2] ss. 403.52-403.5365, F.S.
[3] *See* ss. 403.502 and 403.521, F.S.
[4] *Id.*
[5] ss. 403.509 and 403.529, F.S.
[6] "Associated facilities" means, for the purpose of certification, onsite and offsite facilities which directly support the construction and operation of the electrical power plant, such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility. s. 403.503(7), F.S.
[7] s. 403.50665(1), F.S.
[8] s. 403.50665(2)(a), F.S.
[9] s. 403.508, F.S.

established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.[10]

- The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.[11]

Historically, administrative tribunals in Florida have held that siting of a transmission line does not constitute "development" and is thus exempt from application of the land-use-consistency provisions. One example of this interpretation is the following provision from a 2004 decision[12]:

> First, Gulf Power will create a new right-of-way for the powerline. A right-of-way is a 'right of access,' an easement, or an 'other right[] in land.' The creation of the right-of-way falls within § 380.04(3)(h). Second, Gulf Power will construct the powerline on the newly established right-of-way. Gulf Power is a utility engaged in the distribution or transmission of electricity. The construction of the powerline in the established right-of-way falls within § 380.04(3)(b). See, *Bd. of County Commrs. of Monroe County v. Dept. of Community Affairs*, 560 So.2d 240 (Fla. 3d DCA 1990); *Friends of Matanzas, Inc. v. Dept. of Environmental Protection*, 729 So.2d 437 (Fla. 5th DCA 1999), and *1000 Friends of Florida, Inc. v. St. Johns County*, 765 So.2d 216 (Fla. 5th DCA 2000), interpreting the similar exemption for road improvements within the right-of-way in § 380.04(3)(a), Fla. Stat. (2003).
>
> Therefore, the proposed powerline is not 'development' as defined in section 380.04, Fla. Stat. (2003).

This decision recognized two exclusions from the definition of "development": (1) the exclusion under s. 380.04(3)(h), F.S., for creating a right of access by establishing a right-of-way in the siting proceeding; and (2) the exclusion under s. 380.04(3)(b), F.S., for constructing a power line within established rights-of-way.[13] Other decisions have relied only on the exclusion for constructing a power line within an established right-of-way. For example, a 2008 decision[14] found the following:

> After certification of this project, TECO will acquire the necessary property interests in a ROW within the certified corridor for placement of the line. Construction of transmission lines on such established ROWs is excepted from the definition of 'development' in Section 163.3164(5), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to 'development' that have been adopted by the local governments crossed by the line are not applicable to this project.

In 2016, the Third District Court of Appeal (Court) took a different interpretation of the operative statutes.[15] In that case, Florida Power & Light Company (FPL) filed an application under the PPSA to obtain a permit to construct and operate two new nuclear generating units and associated facilities at Turkey Point, including new transmission lines. The siting board issued a final order of certification that, among other things, approved a back-up transmission corridor if adequate right-of-way could not be obtained in the primary corridor in a timely manner and at a reasonable cost. The final order did not consider local regulations and did not require FPL to underground its lines. The final order was

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[10] s. 380.04(3)(b), F.S.
[11] s. 380.04(3)(h), F.S.
[12] *In Re: Petition for Declaratory Statement filed by Hughes and Knowles*, No. DCA-03-DEC-295, 2004 Fla. ENV LEXIS 166, at *6-*7 (DCA April 9, 2004).
[13] *Id.* at *6.
[14] *In Re: Tampa Electric Company Willow Oak-Wheeler-Davis Transmission Line Siting Application No. TA07-15*, 2008 WL 3896725, Finding of Fact No. 50 (Fla. DOAH May 13, 2008), *adopted in toto* (Fla. Siting Bd. Aug. 1, 2008).
[15] *Miami-Dade County, v. In Re: Florida Power & Light Co.*, Nos. 3D14-1467, 3D14-1466, 3D14-1465, 3D14-1451 (Fla. 3d DCA April 20, 2016), *appeal denied.*; *See* http://www.3dca.flcourts.org/opinions/3D14-1467.pdf and https://efactssc-public.flcourts.org/casedocuments/2016/2277/2016-2277_disposition_137996.pdf, respectively.

appealed, and the Court reversed and remanded the final order. With respect to interpretation of the term "development," the Court found that the siting board erred as follows[16]:

- In the siting process, the siting board certifies a corridor, not a right-of-way, and the exclusion cannot be applied to the entire corridor.
- The record reflects that the corridor is made up of parcels within and outside established rights-of-way, so the siting board has no way of knowing whether construction will take place in a right-of-way or an easement.
- The exclusion is for work conducted on "established rights-of-way" and "as the City of Miami contends, were this Court to accept FPL's argument on this issue, that an established right-of-way is not the same as an existing right-of-way, this would make the word 'established' meaningless."

The effect of the Court's decision is to require, in a certification proceeding under the PPSA, that any associated transmission lines require review for consistency with existing land use plans and zoning ordinances that were in effect on the date the application was filed. This outcome conflicts with the consistent, historical implementation of the PPSA and appears to conflict with the legislative intent of this law.[17]

Local land use plans and ordinances create different classifications of property, each with different permitted uses. Each municipality and county establishes a different patchwork. As a result, the Court's decision may make it extremely difficult, if not impossible, for a transmission line crossing the jurisdiction of multiple local governments to find a path that maintains its compliance with each local government's land use plans and ordinances.

*Siting Board Authority to Impose Conditions*

The PPSA and the TLSA authorize the siting board to include conditions in a certification,[18] but both provide an express statement that they do not affect in any way the ratemaking powers of the Public Service Commission (PSC) under ch. 366, F.S.[19]

In its decision, the Court also reversed and remanded the final order of certification based on a finding that the siting board erroneously determined that it did not have the power to require FPL to install the proposed transmission lines underground at its own expense. Specifically, the Court found:

> The general grant of power in the PPSA to "impose conditions" upon certification, other than those listed in the PPSA, gave the Siting Board the power to impose the condition of requiring that the power lines be installed underground, at FPL's expense. [Citation removed.] Undergrounding of the transmission lines is a condition upon certification encompassed by the Siting Board's ability to impose "site specific criteria, standards, or limitations" on FPL's project. As such, the Siting Board had the power to require it, contrary to the Siting Board's conclusion that it had no such power. Accordingly, reversal is required on this point.[20]

In rendering its decision, the Court distinguished a prior case in which the PSC's "exclusive and superior" authority to regulate public utility rates and service was found to preclude a local government from requiring, by ordinance, a public utility to bear the cost to place its power lines underground.[21] The Court determined that, unlike the local government in the prior case, the siting board has the power

[16] *Miami-Dade County*, at 12-14.
[17] *See* Footnotes 3 and 4, *supra*.
[18] ss. 403.511 and 403.531, F.S.
[19] *Id.*
[20] *Miami-Dade County*, at 14-15.
[21] *See Florida Power Corp. v. Seminole County*, 579 So. 2d 105, 108 (Fla. 1991).

to impose such conditions. The Court further found that the siting board's power in no way infringes on the PSC's authority with regard to ratemaking.

Section 366.04(1), F.S., provides:

> The jurisdiction conferred upon the commission shall be *exclusive and superior to that of all other boards*, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail. (Emphasis supplied.)

This same statutory section establishes the PSC's jurisdiction over the rates and service of each public utility and over the planning, development, and maintenance of a coordinated electric grid to assure adequate and reliable electric service.

Placing transmission lines underground is more expensive than placing them overhead on poles.[22] The actual cost difference depends on the specific circumstances surrounding each particular transmission line site.[23] In its order certifying FPL's proposed Turkey Point facilities, the siting board noted the ALJ's finding of fact that undergrounding would cost roughly nine times more than overhead construction: $13.3-$18.5 million per mile compared to $1.5-$2.5 million per mile.[24]

In general, when a board or agency with regulatory authority over a public utility orders that utility to take actions that require it to incur costs, such costs are considered to be prudently incurred and are recovered in utility rates. Thus, if the siting board were to impose a requirement for a utility to place facilities underground, that decision would impact the PSC's ratemaking authority to determine whether the higher costs of undergrounding the facilities are prudent under the circumstances and to determine who will bear the burden of such costs. Further, imposing such a requirement impacts the PSC's authority to determine how undergrounding of a transmission line may affect electric grid reliability.

**Effect of Proposed Changes**

The bill amends the law to reflect the interpretation and implementation of the PPSA and the TLSA that was applied prior to the Third District Court of Appeals' *Miami-Dade County* decision, effectively eliminating any precedential value from that decision. The bill addresses two issues: (1) application of local land use and development laws in a siting proceeding; and (2) the authority of the siting board to order a transmission line to be installed underground.

The bill amends paragraphs 380.04(b) and (h), F.S., which contain the exclusions from "development" discussed above. The bill provides that the exclusion for construction on established rights-of-way applies to established rights-of-way and corridors and to rights-of-way and corridors *to be established.* It also provides that the exemption for the creation of specified types of property rights applies to creation of distribution and transmission corridors. The bill makes identical changes to s. 163.3221, F.S., which provides definitions for use in the Florida Local Government Development Agreement Act.[25]

The bill also amends ss. 403.511 and 403.531, F.S., which relate to the effect of certification under the PPSA and the TLSA, respectively. First, the bill specifies that the standard for granting variances in the certification process shall be the standard set forth in s. 403.201, F.S., which authorizes variances in the following conditions:

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[22] Edison Electric Institute, *Out of Sight, Out of Mind*, January 2013, *available at* http://www.eei.org/issuesandpolicy/electricreliability/undergrounding/Documents/UndergroundReport.pdf (last visited November 13, 2017).

[23] *Id.* at 29-30.

[24] *In Re: Florida Power & Light Company Turkey Point Units 6&7 Power Plant Siting Application No. PA03-45A3,* 2014 WL 2154563 (Fla. Siting Bd. May 19, 2014).

[25] The Florida Local Government Development Agreement Act provides for agreements between local governments and developers to improve the growth management and public planning processes.

- There is no practicable means known or available for the adequate control of the pollution involved;
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate taking measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required; or
- To relieve or prevent hardship of a kind other than those provided for above. Variances and renewals thereof granted under this provision are limited to a period of 24 months, except that certain variances may extend for the life of the permit or certification.

The bill also provides that the PPSA and the TLSA shall not affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 163.3221, F.S., relating to definitions in the Florida Local Government Development Agreement Act.

**Section 2.** Amends s. 380.04, F.S., relating to the definition of development.

**Section 3.** Amends s. 403.511, F.S., relating to the effect of certification under the Florida Electrical Power Plant Siting Act.

**Section 4.** Amends s. 403.531, F.S., relating to the effect of certification under the Florida Electric Transmission Line Siting Act.

**Section 5.** Provides an effective date upon becoming law.

## 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:

The bill clarifies the application of local land use laws to transmission line corridors in siting cases under the PPSA and the TLSA. This may reduce expenses of siting and legal proceedings by providing certainty.

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 spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to linear facilities; amending s. 163.3221, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 380.04, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 403.511, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; amending s. 403.531, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; providing an effective

date.

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

Section 1. Paragraph (b) of subsection (4) of section 163.3221, Florida Statutes, is amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(4) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(b) The following operations or uses shall not be taken for the purpose of this act to involve "development":

1. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

2. Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

3. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

4. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

5. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

6. A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

7. A change in the ownership or form of ownership of any parcel or structure.

8. The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 2. Paragraphs (b) and (h) of subsection (3) of section 380.04, Florida Statutes, are amended to read:

380.04 Definition of development.—

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(h) The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 3. Paragraph (b) of subsection (2) and subsection (4) of section 403.511, Florida Statutes, are amended to read:

403.511 Effect of certification.—

(2)

(b)1. Except as provided in subsection (4), and in consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which

affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(4) This act shall not affect in any way the Public Service Commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground ~~of the Public Service Commission~~ under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

Section 4. Paragraph (b) of subsection (2) and subsection (4) of section 403.531, Florida Statutes, are amended to read:

403.531 Effect of certification.—

(2)

(b) In consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions that constitute variances and exemptions from nonprocedural standards or rules of the department or any other agency which were expressly considered during the certification review unless waived by the agency as provided in s. 403.526 and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines.

(4) This act does not in any way affect the commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground ~~of the commission~~ under chapter 366. This act does not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

Section 5. This act shall take effect upon becoming a law.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 469 Salvage of Pleasure Vessels
**SPONSOR(S):** Harrison
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 664

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Natural Resources & Public Lands Subcommittee | | Moore | Shugar |
| 2) Careers & Competition Subcommittee | | | |
| 3) Government Accountability Committee | | | |

## SUMMARY ANALYSIS

Currently, state law does not require salvors to notify customers regarding the potential costs associated with the salvage of their pleasure vessel. Salvage is the amount allowed to persons who voluntarily assist a ship at sea or her cargo or both, whether saved in whole or in part from impending sea peril, or in the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars.

This bill creates the "Florida Salvage of Pleasure Vessels Act" (Act) providing certain consumer protections for salvage work performed on their pleasure vessel, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles. Under the bill, "salvage work" includes any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew that are in marine peril, but does not include towing. The bill defines a "pleasure vessel" as a watercraft that is no more than 60 feet in length used solely for personal pleasure, family use, or the transportation of executives, employees, and guests of the owner.

The bill applies, with a few exceptions, to all salvors operating in Florida. It requires salvors, if the customer is present on the vessel, to present a written disclosure statement if the salvage work may exceed $500, which must provide for acknowledgment and signature from the customer. It also requires the salvor at any time before or during the rendering of salvage work to prepare a written estimate if requested by the customer. If a salvor's charges exceed the written estimate by more than 20 percent, then the customer must be verbally notified promptly of the additional estimated charge. The customer may, orally or in writing, authorize, modify, or cancel the order for salvage. The salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized. If the customer cancels the order for salvage after being advised that authorized salvage work cannot be accomplished within the previously authorized estimate, then the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or to do so would be unsafe. The salvor may charge for salvage work provided up to the point of cancellation, but the charge may not exceed the agreed cancellation fee.

The bill requires that all salvage work vessels have signs posted in a conspicuous manner that can be read from a customer's pleasure vessel, which informs the customer that the salvors are professional salvors that charge for their services and that the customer has a right to a written estimate for the services offered.

The bill provides for violations of the Act and provides that a customer injured by a violation who prevails in court is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, reasonable attorney fees, injunctive relief, and any other remedy provided by law.

The bill does not appear to have a fiscal impact on state or local government or private sector.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

A vessel of the United States, or a numbered motorboat owned by a citizen, may engage in any salvage operation in territorial waters of the United States.[1]

"Salvage is the compensation allowed to persons by whose voluntary assistance to a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril, or in recovering such property from actual peril or loss, as in cases of shipwreck, derelict, or recapture."[2] The following factors have traditionally been considered in determining a salvage award: the labor expended by the salvors in rendering the salvage service; the promptitude, skill, and energy displayed in rendering the service and saving the property; the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed; the risk incurred by the salvors in securing the property from the impending peril; the value of the property saved; and the degree of danger from which the property was rescued.[3] The 1989 International Convention on Salvage, which the United States is a party,[4] added additional factors to consider when making a salvage award determination, which include consideration for prevention or minimization of environmental damage.[5]

In weighing these factors, a salvage award can vary greatly from a few hundred dollars[6] to thousands of dollars.[7] Currently, state law does not require salvors to notify customers of the potential costs involved in the salvage of their vessel.

**Effect of Proposed Changes**

The bill provides certain consumer protections for salvaging of pleasure vessels, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles.

The bill directs the Division of Law Revision and Information to redesignate s. 559.951, F.S., as part XIII of ch. 559, F.S., entitled "Miscellaneous Provisions," and create a new part XII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled "Salvage of Pleasure Vessels."

The bill creates s. 559.9601, F.S., providing a short title. The bill provides that ss. 559.9601-559.9608, F.S., may be cited as the "Florida Salvage of Pleasure Vessels Act" (Act).

The bill creates s. 559.9602, F.S., providing scope and application. The bill provides that the Act applies to all salvors operating in Florida, with the following exceptions: a person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government; a person who engages solely in salvage work for pleasure vessels that

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[1] 19 C.F.R. § 4.97(a) (1969).
[2] *The Sabine*, 101 U.S. 384 (1879).
[3] *The Blackwell*, 77 US. 1 (1869).
[4] United Nations. *International Convention on Salvage*, https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf, (last visited Nov. 17, 2017).
[5] *International Convention on Salvage, 1989*, http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf (last visited Nov. 17, 2017); International Maritime Organization. *International Convention on Salvage*. http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx, (last visited Nov. 17, 2017).
[6] *Hernandez v. Roberts*, 675 F.Supp. 1329, (S.D.Fla.1988).
[7] *Lewis v. JPI Corp.*, No. 07-20103-CIV, 2009 WL 3761984 (S.D. Fla. Nov. 9, 2009); *Esoteric, LLC v. One (1) 2000 Eighty-Five Foot Azimut Motor Yacht Named M/V "Star One"*, No. 10-15652 (11th Cir. June 12, 2012).

are owned, maintained, and operated exclusively by such person and for that person's own use or for-hire pleasure vessels that are rented for periods of 30 days or less; a person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility; and a person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer.

The bill creates s. 559.9603, F.S., providing definitions. The bill defines:

- Customer as the person who requests or signs the written salvage estimate or is entitled to receive a written salvage estimate, or any other person whom the person who requests, signs, or is entitled to receive the written salvage estimate designates on the written salvage estimate as a person who may authorize salvage work;
- Employee as an individual who is employed full-time or part-time by a salvor and performs salvage work;
- Pleasure vessel as any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, employees, and guests of the owner;
- Salvage work as any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew, which are in marine peril. Salvage work does not include towing a pleasure vessel; and
- Salvor as a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

The bill creates s. 559.9604, F.S., requiring a written disclosure statement and salvage work estimate. The bill requires that if the customer is present on the vessel the salvor must present a written disclosure statement to the customer if the cost of salvage work may exceed $500. The bill also requires that the written disclosure statement contain the following statement in a separate, blocked section, in capital letters of at least 12-point type:

> PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:
>
> I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL MAY EXCEED $500.
>
> .... I REQUEST A WRITTEN ESTIMATE.
>
> .... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE SALVAGE CHARGES DO NOT EXCEED $ ..... THE SALVOR MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.
>
> .... I DO NOT REQUEST A WRITTEN ESTIMATE.
>
> SIGNED ..... DATE ....

The bill also requires a salvor to provide a written salvage work estimate when a customer requests such estimate any time before or during the rendering of any salvage work. The written estimate must be in a form stating the estimated cost of salvage work, including the cost of any inspections or diagnostic work, and must also include: the name, address, and telephone number of the salvor's business; the name, address, and telephone number of the customer; the date and time of the written salvage estimate; a general description of the pleasure vessel; a general description of the customer's problem or request for repair work or service relating to the pleasure vessel; a statement as to the basis on which the customer is being charged, such as a flat rate, an hourly rate, or both; and the estimated cost of the salvage work; a statement indicating the daily charge for storing the customer's pleasure

vessel if it is to be towed or otherwise transported to a different location than where the salvor performs the salvage work; and a cancellation fee, as determined by the salvor, in the event a customer cancels the order for services.

If the salvor does not possess sufficient information concerning the source, cause, or nature of the marine peril to formulate an estimate for the salvage work, then the salvor must provide the customer an estimate for the effort required to determine the source, cause, or nature of the marine peril. When the salvor has sufficient information to provide an estimate for the cost of the salvage work, the salvor must provide the estimate.

The bill requires that a copy of the disclosure statement and, if requested, the written salvage estimate be given to the customer before salvage work begins. The disclosure statement and the written estimate may be on the same form. However, a salvor is not required to give a written estimated price if the salvor does not agree to provide any assistance, service, repairs, or other effort to a potential customer.

The bill allows a customer to cancel the salvage work at any time.

The bill creates s. 559.9605, F.S., regarding notification of charges in excess of salvage estimate; unlawful charges. The bill requires that if a salvor determines that the actual charges for the assistance, service, or repair work will exceed the written estimate by more than 20 percent, then the customer must be verbally notified promptly of the additional estimated charge. A customer so notified may, orally or in writing, authorize, modify, or cancel the order for salvage. The salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized. The bill also provides that if a customer cancels the order for salvage after being advised that authorized salvage work cannot be accomplished within the previously authorized estimate, then the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or to do so would be unsafe. After cancellation, the salvor may charge for salvage work provided up to the point of cancellation, but the salvor's charge may not exceed the agreed cancellation fee. The salvor may only charge for any work undertaken on the agreed-upon basis.

The bill creates s. 559.9606, F.S., requiring disclosure; signs; and notice to customers. The bill requires that all vessels used by salvors in connection with performing salvage work have signs posted in a manner conspicuous to customers and potential customers and that can be read from customers' and potential customers' pleasure vessels. The signs must inform customers and potential customers that the salvors are professional salvors that charge for their services and that customers and potential customers have a right to a written estimate for the services offered.

The bill creates s. 559.9607, F.S., regarding unlawful acts and practices. The bill provides that it is a violation for a salvor or its employees to: provide or charge for services that have not been expressly or implicitly authorized by the customer when the customer is present on the pleasure vessel; misrepresent that a pleasure vessel being inspected is in a dangerous condition or that the customer's continued use of the pleasure vessel may be hazardous to the customer or cause great damage to, or loss of, the vessel; fraudulently alter any customer contract, estimate, invoice, or other document; fraudulently misuse any customer's credit card; make or authorize in any manner or by any means whatsoever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care the salvor should know, to be untrue, deceptive, or misleading; make false statements of a character likely to influence, persuade, or induce a customer to authorize salvage work for a pleasure vessel; require that any customer waive her or his rights provided in this part as a precondition to performing salvage work; charge a customer more than 20 percent over the written estimate provided to the customer, unless the salvor has obtained authorization to exceed the written estimate; or perform any other act that violates this part or that constitutes fraud or misrepresentation.

The bill creates s. 559.9608, F.S., providing remedies. The bill provides that a customer injured by a violation may bring an action in the appropriate court for relief. A customer who prevails is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief. The bill provides that these remedies are in addition to any other remedy provided by law.

B. SECTION DIRECTORY:

Section 1. Directs the Division of Law Revision and Information to redesignate Florida Statutes.

Section 2. Creates s. 559.9601, F.S., providing a short title.

Section 3. Creates s. 559.9602, F.S., providing scope and application.

Section 4. Creates s. 559.9603, F.S., providing definitions.

Section 5. Creates s. 559.9604, F.S., regarding written disclosure statement and salvage work estimate.

Section 6. Creates s. 559.9605, F.S., regarding notification of changes in excess of salvage estimate; unlawful charges.

Section 7. Creates s. 559.9606, F.S., regarding required disclosure; signs; notice to customers.

Section 8. Creates s. 559.9607, F.S., regarding unlawful acts and practices.

Section 9. Creates s. 559.9608, F.S., providing remedies.

Section 10. Provides an effective date of July 1, 2018.

## 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. 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

Not applicable.

A bill to be entitled

An act relating to the salvage of pleasure vessels; providing a directive to the Division of Law Revision and Information; creating s. 559.9601, F.S.; providing a short title; creating s. 559.9602, F.S.; providing scope and applicability; creating s. 559.9603, F.S.; providing definitions; creating s. 559.9604, F.S.; requiring salvors of pleasure vessels to provide a specified written disclosure statement and salvage work estimate; creating s. 559.9605, F.S.; requiring such salvors to obtain customer permission before exceeding the written estimate by more than a specified amount; specifying salvor responsibilities and rights to certain fees in the event that a customer cancels the order for salvage; creating s. 559.9606, F.S.; requiring salvors to post specified signage on their vessels; creating s. 559.9607, F.S.; specifying violations; creating s. 559.9608, F.S.; providing remedies; specifying that such remedies are in addition to others provided by law; providing an effective date.

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

Section 1. The Division of Law Revision and Information is

directed to redesignate s. 559.951, Florida Statutes, as part XIII of chapter 559, Florida Statutes, entitled "Miscellaneous Provisions," and create a new part XII of chapter 559, Florida Statutes, consisting of ss. 559.9601-559.9608, Florida Statutes, to be entitled "Salvage of Pleasure Vessels."

Section 2. Section 559.9601, Florida Statutes, is created to read:

559.9601 Short title.—Sections 559.9601-559.9608 may be cited as the "Florida Salvage of Pleasure Vessels Act."

Section 3. Section 559.9602, Florida Statutes, is created to read:

559.9602 Scope and application.—This part shall apply to all salvors operating in Florida, except:

(1) Any person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government.

(2) Any person who engages solely in salvage work for:

(a) Pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use; or

(b) For-hire pleasure vessels that are rented for periods of 30 days or less.

(3) Any person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively

at that person's facility.

(4) Any person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer.

Section 4. Section 559.9603, Florida Statutes, is created to read:

559.9603 Definitions.—As used in this part, the term:

(1) "Customer" means the person who requests or signs the written salvage estimate or is entitled to receive a written salvage estimate, or any other person whom the person who requests, signs, or is entitled to receive the written salvage estimate designates on the written salvage estimate as a person who may authorize salvage work.

(2) "Employee" means an individual who is employed full-time or part-time by a salvor and performs salvage work.

(3) "Pleasure vessel" means any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, employees, and guests of the owner.

(4) "Salvage work" means any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew which are in marine peril. Salvage work does not include towing a pleasure vessel.

(5) "Salvor" means a person in the business of voluntarily

providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

Section 5. Section 559.9604, Florida Statutes, is created to read:

559.9604 Written disclosure statement and salvage work estimate.—

(1) If the cost of salvage work may exceed $500 and the customer is present on the vessel, the salvor must present to the customer a written notice conspicuously disclosing in a separate, blocked section only the following statement, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL MAY EXCEED $500.

.... I REQUEST A WRITTEN ESTIMATE.

.... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE SALVAGE CHARGES DO NOT EXCEED $ ..... THE SALVOR MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

.... I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED ..... DATE ....

(2) When a customer requests an estimate for the cost of salvage work any time before or during the rendering of any salvage work by a salvor, the salvor shall prepare a written estimate for the costs of its services, in a form stating the estimated cost of salvage work, including the cost of any inspections or diagnostic work. The written salvage estimate must also include the following items:

(a) The name, address, and telephone number of the salvor's business.

(b) The name, address, and telephone number of the customer.

(c) The date and time of the written salvage estimate.

(d) A general description of the pleasure vessel.

(e) A general description of the customer's problem or request for repair work or service relating to the pleasure vessel.

(f) A statement as to the basis on which the customer is being charged, such as a flat rate, an hourly rate, or both.

(g) The estimated cost of the salvage work. If the salvor does not possess sufficient information concerning the source, cause, or nature of the marine peril to formulate an estimate

for the salvage work, the salvor must provide the customer an estimate for the effort required to determine the source, cause, or nature of the marine peril in accordance with this section. At such time that the salvor has sufficient information to provide an estimate for the cost of the salvage work, the salvor shall provide that estimate according to this section.

(h) A statement indicating the daily charge for storing the customer's pleasure vessel if it is to be towed or otherwise transported to a different location than where the salvor performs the salvage work.

(i) A cancellation fee, as determined by the salvor, in the event a customer cancels the order for services in accordance with s. 559.9605(1).

(3) A copy of the disclosure statement required by subsection (1) and, if requested, the written salvage estimate required by subsection (2) must be given to the customer before salvage work begins. The disclosure statement may be provided on the same form as the written estimate.

(4) This section may not be construed to require a salvor to give a written estimated price if the salvor does not agree to provide any assistance, service, repairs, or other effort to a potential customer.

(5) A customer may cancel the salvage work at any time.

Section 6. Section 559.9605, Florida Statutes, is created to read:

559.9605 Notification of charges in excess of salvage estimate; unlawful charges.—

(1) If a determination is made by a salvor that the actual charges for the assistance, service, or repair work will exceed the written estimate by more than 20 percent, the customer must be promptly verbally notified of the additional estimated charge. A customer so notified may, orally or in writing, authorize, modify, or cancel the order for salvage. Except as specified in this section, the salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized.

(2) If a customer cancels the order for salvage after being advised that salvage work which she or he has authorized cannot be accomplished within the previously authorized estimate, the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received unless:

(a) The customer waives that effort; or

(b) To do so would be unsafe.

After cancellation of the salvor's service, the salvor may charge for salvage work provided up to the point of cancellation, but the salvor's charge may not exceed the cancellation fee agreed to by the salvor pursuant to s.

559.9604(2)(i). The salvor may only charge for any work undertaken on the agreed-upon basis.

Section 7. Section 559.9606, Florida Statutes, is created to read:

559.9606 Required disclosure; signs; notice to customers.—All vessels used by salvors in connection with performing salvage work shall have signs posted in a manner conspicuous to customers and potential customers and that can be read from customers' and potential customers' pleasure vessels. Those signs must inform customers and potential customers that the salvors are professional salvors that charge for their services and that customers and potential customers have a right to a written estimate for the services offered.

Section 8. Section 559.9607, Florida Statutes, is created to read:

559.9607 Unlawful acts and practices.—It is a violation of this act for a salvor or its employees to:

(1) Provide or charge for services that have not been expressly or implicitly authorized by the customer when the customer is present on the pleasure vessel.

(2) Misrepresent that a pleasure vessel being inspected is in a dangerous condition or that the customer's continued use of the pleasure vessel may be hazardous to the customer or cause great damage to, or loss of, the vessel.

(3) Fraudulently alter any customer contract, estimate,

invoice, or other document.

(4) Fraudulently misuse any customer's credit card.

(5) Make or authorize in any manner or by any means whatsoever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care the salvor should know, to be untrue, deceptive, or misleading.

(6) Make false statements of a character likely to influence, persuade, or induce a customer to authorize salvage work for a pleasure vessel.

(7) Require that any customer waive her or his rights provided in this part as a precondition to performing salvage work.

(8) Charge a customer more than 20 percent over the written estimate provided to the customer pursuant to s. 559.9604, unless the salvor has obtained authorization to exceed the written estimate in accordance with s. 559.9605(1).

(9) Perform any other act that violates this part or that constitutes fraud or misrepresentation.

Section 9. Section 559.9608, Florida Statutes, is created to read:

559.9608 Remedies.—

(1) Any customer injured by a violation of this part may bring an action in the appropriate court for relief. A customer who prevails in such an action shall be entitled to damages in

the amount of three times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief in the circuit court.

(2) The remedies provided for in this section shall be in addition to any other remedy provided by law.

Section 10. This act shall take effect July 1, 2018.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 703 Water Management District Surplus Lands
**SPONSOR(S):** Burgess, Jr.
**TIED BILLS:** HB 705 **IDEN./SIM. BILLS:** SB 806

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Natural Resources & Public Lands Subcommittee | | Gregory | Shugar KS |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | | |
| 3) Government Accountability Committee | | | |

## SUMMARY ANALYSIS

A water management district (WMD) may acquire, own, manage, and dispose of real property in its own name to further its goals and mission. When selling land, a WMD must follow the procedures set forth in ss. 373.056 and 373.089, F.S.

The bill makes several changes to the surplus procedures for WMDs to create efficiencies in the process. Specifically, the bill:

- Requires a WMD to publish notice of its intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. The current law does not specify a date from which the 30 or 360 days must be counted;
- Authorizes a WMD to sell land valued at $25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public;
- Requires a WMD to publish the notice of intention to offer to sell land valued at $25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time;
- Defines "adjacent property owners;" and
- Removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at $25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

A water management district (WMD) may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes.[1] Further, a WMD may accept real property from state and local governments when it is in the public interest and for public convenience and welfare, for the public benefit, necessary for carrying out the works or improvement of any WMD for the protection of property and the inhabitants in the WMD against the effects of water, and for assisting the WMD to acquire land at least public expense.[2] Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).[3]

The five WMDs own approximately 1,908,969 acres of conservation land. Approximately 1,481,129 acres are held in fee simple, while 427,840 acres are held in conservation easements.[4] In addition to the purposes described above, WMDs manage their lands for recreation, camping, trail use, hunting, and revenue generation. Lands held by a WMD are not subject to taxes or special assessments so long as the title or rights remain held by the WMD.[5]

Sale of WMD Lands

A WMD may sell lands its governing board determines to be surplus at any time.[6] If a WMD decides to sell its real property, or interest therein, it must follow the procedures in ss. 373.056 or 373.089, F.S.[7] These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.[8] Such sales must be in cash and on the terms set by the governing board of the WMD.[9] The WMD must publish notice of its intent to sell the land in a newspaper in the county where the land is located.[10] The notice of intent must be published three times for three successive weeks at least 30 days, and not more than 360 days, before any sale.[11] The notice of intent must describe the land to be sold or the interest or rights to be sold.[12]

Public and private entities may request that a WMD make its lands available for purchase when those lands are not essential or necessary to meet conservation purposes and when:

- The land is located in a county with a population of 75,000 or fewer or within a county with a population of 100,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; and

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[1] Section 373.139(2), F.S.
[2] Section 373.056(1)(a), F.S. State and local governments may require WMDs to return the land if the WMD ceases to use the land for the purposes described above. Section 373.056(2), F.S.
[3] Section 373.099, F.S.
[4] Florida Natural Areas Inventory, *Summary of Florida Conservation Lands February 2017*, available at: http://www.fnai.org/PDF/Maacres_201702_FCL_plus_LTF.pdf (last visited November 21, 2017).
[5] Section 373.056(5) and (6), F.S.
[6] Section 373.089(1), F.S.
[7] Section 373.139(6), F.S.
[8] Section 373.089(1), F.S.
[9] Section 373.089(2), F.S.
[10] Section 373.089(3), F.S.
[11] *Id.*
[12] *Id.*

- More than 50 percent of the lands within the county boundary are federal lands and lands titled in the name of the state, a state agency, a WMD, or a local government.[13]

When public and private entities make such a request, and the lands are determined to be surplus, the WMD must give priority consideration to public or private buyers who are willing to return the property to productive use so long as the property can reenter the county ad valorem tax roll.[14]

When deciding whether to sell lands designated as acquired for conservation purposes, the governing board of the WMD must determine by a two-thirds vote that the land is no longer needed for conservation purposes.[15] For all other lands, the governing board of the WMD must determine by a majority vote that the land is no longer needed.[16]

Prior to selling land, a WMD must first offer title to lands acquired in whole or in part with Florida Forever fund to the Board of Trustees unless:

- The land will be used for linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances;
- The WMD will sell the fee interest in the land and retain a conservation easement to fulfill the conservation objectives for which the land was acquired;
- The land will be exchanged for other lands that meet or exceed the conservation objectives for which the original land was acquired;
- The land will be used by a governmental entity for a public purpose; or
- The portion of an overall purchase deemed surplus at the time of the acquisition.[17]

If the Board of Trustees declines to accept title to the land, the WMD may dispose of the land.[18]

A WMD may expedite the disposal of land valued at $25,000 or less. If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, the governing board of the WMD may determine that the parcel of land is surplus. Unlike other surplus parcels, the WMD must publish the notice of intention to sell in the newspaper in the county where the land is located only one time. The WMD must send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. Fourteen days after publication of notice, the WMD may sell the parcel to an adjacent property owner. If there are two or more owners of adjacent property, the WMD may accept sealed bids and sell the parcel to the highest bidder or reject all offers. Thirty days after publication of notice, the WMD must accept sealed bids and may sell the parcel to the highest bidder or reject all offers.[19]

**Effect of the Proposed Changes**

The bill changes the procedures for a WMD to more efficiently sell its surplus lands.

The bill amends s. 373.089(3), F.S., to require a WMD to publish notice of their intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. The current law does not specify a date from which the 30 or 360 days must be counted. Depending on how a particular WMD interprets this notice requirement, this may extend the publication time for the WMD's intent to sell their land.

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[13] Section 373.089(5), F.S.
[14] *Id.*
[15] Section 373.089(6)(a), F.S.
[16] Section 373.089(6)(b), F.S.
[17] Section 373.089(7), F.S.
[18] *Id.*
[19] Section 373.089(8), F.S.

The bill amends s. 373.089(8)(a), F.S., to authorize a WMD to sell land valued at $25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public. Thus, a WMD may opt to sell the land to adjacent property owners first or offer the land to general public regardless of whether they are neighboring property owners. The bill also requires a WMD to publish the notice of intention to offer to sell land valued at $25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time. A WMD must still wait 14 days after publication of notice before selling the parcel to the adjacent property owner. The bill defines "adjacent property owners" to mean those owners whose property abuts the parcel.

Lastly, the bill amends s. 373.089(8)(c), F.S., to remove the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at $25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 373.089, F.S., relating to sale of exchange of lands, or interest or rights in lands.

**Section 2.** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on a WMD selling surplus lands valued at $25,000 or less by authorizing it to more efficiently sell surplus property by removing the requirement that the WMD:
   - Offer the land to the adjacent owner first; and
   - Use competitive bidding procedures to sell lands not sold to the adjacent property owners.

2. Expenditures:

   The bill may have an indeterminate positive fiscal impact on a WMD selling surplus lands valued at $25,000 or less by removing the requirement that a WMD use competitive bidding procedures to sell lands not sold to the adjacent property owners.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Lands owned by a WMD are exempt from taxes and special assessments.[20] The bill may have an indeterminate positive fiscal impact on local governments if a WMD is able to more efficiently sell their surplus property to owners who may be taxed by local governments.

2. Expenditures:

   None.

[20] Section 373.056(5) and (6), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to water management district surplus lands; amending s. 373.089, F.S.; revising the circumstances when a water management district must publish its intention to sell surplus lands; revising the process for selling certain lower valued surplus lands; defining the term "adjacent property owners"; providing an effective date.

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

Section 1. Subsections (3) and (8) of section 373.089, Florida Statutes, are amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(3) Before selling any surplus land, or interests or rights in land, the district shall publish a notice of intention to sell in a newspaper published in the county in which the land, or interests or rights in the land, is situated once each week for 3 successive weeks, three insertions being sufficient. The first publication of the required notice must occur at least 30 days, but not more than 360 days, before any sale is approved

by the district and must include a description of lands, or interests or rights in lands, to be offered for sale.

(8)(a) If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, as specified in subsection (1), the governing board may determine that the parcel of land is surplus and may offer to sell it to the adjacent property owners. If the governing board elects to offer for sale the parcel to adjacent property owners pursuant to this subsection, the governing board must publish the notice of intention to sell ~~must be published~~ as required under subsection (3), one time only and~~.~~ the governing board must ~~shall~~ send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. For the purpose of this subsection, the term "adjacent property owners" means those owners whose property abuts the parcel.

(b) Fourteen days after publication of such notice, the district may sell the parcel to an adjacent property owner or, if there are two or more owners of adjacent property, accept sealed bids and sell the parcel to the highest bidder or reject all offers.

(c) If the parcel is not sold to an adjacent property owner pursuant to paragraph (b), the district may sell the

parcel at any time to the general public for the highest price obtainable ~~Thirty days after publication of such notice, the district shall accept sealed bids and may sell the parcel to the highest bidder or reject all offers~~.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. This act shall take effect July 1, 2018.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 705 Pub. Rec./Water Management District Surplus Lands
**SPONSOR(S):** Burgess, Jr.
**TIED BILLS:** HB 703 **IDEN./SIM. BILLS:** SB 808

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Natural Resources & Public Lands Subcommittee | | Gregory | Shugar KS |
| 2) Oversight, Transparency & Administration Subcommittee | | | |
| 3) Government Accountability Committee | | | |

### SUMMARY ANALYSIS

A water management district (WMD) may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes. Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).

A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The exemption will expire when:

- The WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land;
- In the sole discretion of the WMD, the conclusion of negotiations or marketing efforts related to the surplus land; or
- The passage of one year from the date of the completion of the valuation.

The bill authorizes a WMD to disclose confidential and exempt appraisals, valuations, and valuation information that are related to surplus land, or written offers to purchase such surplus land before the expiration of the exemption:

- During negotiations for the sale or exchange of the land; or
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land.

The bill also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on a WMD.

**Article I, s. 24(c) of the State 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 a new public record exemption. Thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency[1] to provide access to public records.[2] Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[3]

The Open Government Sunset Review Act[4] 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as

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[1] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

[2] Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

[3] FLA. CONST. art. I, s. 24(c).

[4] Section 119.15, F.S.

[5] Section 119.15(6)(b), F.S.

[6] Section 119.15(3), F.S.

exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.[7] However, records designated as exempt may be disclosed under certain circumstances.[8]

Surplus of Water Management District (WMD) Lands

A water management district (WMD) may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes.[9] Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).[10]

The five WMDs own approximately 1,908,969 acres of conservation land. Approximately, 1,481,129 acres are held in fee simple, while 427,840 acres are held in conservation easements.[11] In addition to the purposes described above, the WMDs manage their lands for recreation, camping, trail use, hunting, and revenue generation.

A WMD may sell lands its governing board determines to be surplus at any time.[12] If a WMD decides to sell its real property, or interest therein, it must follow the procedures in ss. 373.056 or 373.089, F.S.[13] These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.[14]

Public Record Exemptions for Written Valuations of Land and Written Offers

Currently, there is no public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land.

A public records exemption exists for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation. The exemption expires two weeks before the Board of Trustees first considers for approval the contract or agreement regarding the purchase, exchange, or disposal of the surplus land. The Department of Environmental Protection (DEP) may disclose the confidential and exempt appraisals, valuations, or valuation information regarding surplus land before the exemption expires:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.[15]

Further, a public records exemption exists for sealed bids, proposals, or replies received by any agency pursuant to a competitive solicitation. The exemption expires when the agency provides notice of an intended decision or until thirty days after opening the bids, proposals, or final replies, whichever is

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[7] WFTV, Inc. v. School Board of Seminole County, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).
[8] *See* Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[9] Section 373.139(2), F.S.
[10] Section 373.099, F.S.
[11] Florida Natural Areas Inventory, *Summary of Florida Conservation Lands February 2017*, available at: http://www.fnai.org/PDF/Maacres_201702_FCL_plus_LTF.pdf (last visited November 21, 2017).
[12] Section 373.089(1), F.S.
[13] Section 373.139(6), F.S.
[14] Section 373.089(1), F.S.
[15] Section 253.0341(8), F.S.

earlier.[16] For the purposes of the exemption, "competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.[17] Rejected bids, proposals, or replies remain exempt if an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation. However, a bid, proposal, or reply is not exempt for longer than twelve months after the initial agency notice rejecting all bids, proposals, or replies.[18]

All appraisals, other reports relating to value, offers, and counteroffers are exempt when an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain. This exemption expires upon execution of a valid option contract or the agency conditionally accepts a written offer to sell. For the purpose of the exemption, the term "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. If parties do not execute a valid option contract, or the agency does not conditionally accept a written offer to sell, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property.[19]

Lastly, appraisal reports, offers, and counteroffers for lands a WMD is seeking to purchase are confidential and exempt until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. A WMD may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the WMD determines that disclosure of such reports will bring the proposed acquisition to closure. If negotiation is terminated by the WMD, the appraisal report, offers, and counteroffers shall become available. A WMD and DEP may share and disclose appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated. A WMD and DEP must maintain the confidentiality of such appraisal reports, appraisal information, offers, and counteroffers, except in those cases where a WMD and DEP have exercised discretion to disclose such information. A WMD may disclose appraisal information, offers, and counteroffers to a third party who has entered into a contractual agreement with the WMD to work with or on the behalf of or to assist the district in connection with land acquisitions. The third party must maintain the confidentiality of such information in conformance with this section. In addition, a WMD may use, as its own, appraisals obtained by a third party provided the appraiser is selected from the WMD's list of approved appraisers and the appraisal is reviewed and approved by the district.[20]

HB 703 (2018)

HB 703 makes several changes to the surplus procedures for WMDs to create efficiencies in the process. Specifically, the bill:

- Requires a WMD to publish notice of its intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. The current law does not specify a date from which the 30 or 360 days must be counted;
- Authorizes a WMD to sell land valued at $25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public;
- Requires a WMD to publish the notice of intention to offer to sell land valued at $25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time;
- Defines "adjacent property owners;" and

[16] Section 119.071(1)(b)2., F.S.
[17] Section 119.071(1)(b)1., F.S.
[18] Section 119.071(1)(b)3., F.S.
[19] Section 119.0711, F.S.
[20] Section 373.139(3)(a), F.S.

- Removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at $25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.

**Effect of the Proposed Changes**

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The proposed exemption is similar to the exemption for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation in s. 253.0341(8)(a), F.S. However, it adds written offers to purchase such surplus lands.

The proposed exemption will expire when:

- The WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land. This is similar to expiration for the exemption for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation found in s. 119.071(1)(b)2., F.S. However, the exemption is different from written valuations of Board of Trustees owned land deemed surplus in s. 253.0341(8)(a)1., F.S., which expires two weeks before the Board of Trustees first considers for approval the contract or agreement regarding the purchase, exchange, or disposal of the surplus land;
- In the sole discretion of the WMD, negotiations or marketing efforts related to the surplus land conclude. This is similar to the voluntary disclosure of written valuations of Board of Trustees owned land deemed surplus in s. 253.0341(8)(a)2.d., F.S.; or
- The passage of one year from the date of the completion of the valuation. This is similar to the expiration of the exemption for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation found in s. 119.071(1)(b)3., F.S. However, that expiration applies to bids, proposals, and replies after the initial agency notice rejecting all bids, proposals, or replies.

The bill authorizes a WMD to disclose confidential and exempt appraisals, valuations, and valuation information that are related to surplus land, or written offers to purchase such surplus land before the expiration of the exemption:

- During negotiations for the sale or exchange of the land. This is similar to DEP's discretion to disclose in s. 253.0341(8)(a)2.a., F.S.; or
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land. This is similar to DEP's discretion to disclose in s. 253.0341(8)(a)2.b., F.S.

The bill authorizes a WMD to disclose this information to facilitate successful or expedited closure of the sale of surplus land.

The bill provides a statement of public necessity as required by the State Constitution. Specifically, the bill finds that the public availability of such valuations, related documents, and written offers can negatively impact the ability of a WMD to negotiate with potential purchasers and potentially places a WMD at a disadvantage in attempting to maximize the return on the sale of surplus land.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.089, F.S., creating a public record exemption for written valuations of WMD land determined to be surplus pursuant; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is contingent upon the passage of HB 703 or similar legislation.

## 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:

The bill may negatively affect potential surplus land purchasers who use public information requests to gain a competitive advantage when making offers for surplus WMD parcels.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on a WMD because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, a WMD may incur costs associated with redacting the exempt financial information prior to releasing a record. However, these costs can be absorbed as they are part of the day-to-day responsibilities of a WMD.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote requirement
   Article I, s. 24(c) of the State 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 a new public record exemption. Thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State 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 a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. 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:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.[21] This bill creates a new exemption, but does not include a statement that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[21] Section 119.15(4)(a)3., F.S.

A bill to be entitled

An act relating to a public records; amending s. 373.089, F.S.; providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (1) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, ~~in no case shall~~ the selling price may not be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(a) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires upon:

1. The contract or agreement regarding the purchase, exchange, or disposal of the surplus land being approved by the district;

2. In the sole discretion of the district, the conclusion of negotiations or marketing efforts related to the surplus land; or

3. The passage of 1 year from the date of the completion of the valuation.

(b) Before expiration of the exemption established in paragraph (a), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt appraisals, valuations, and valuation information which are related to surplus land, or written offers to purchase such surplus land:

1. During negotiations for the sale or exchange of the land; or

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. The Legislature finds that it is a public necessity that written valuation of land determined to be surplus pursuant to s. 373.089, Florida Statutes, related documents used to form the valuation or which pertain to the valuation, and written offers to purchase surplus land, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for up to 1 year at a water management district's discretion in order to facilitate successful or expedited closure of the sale of surplus lands. The public availability of such valuations, related documents, and written offers can negatively impact the ability of water management districts to negotiate with potential purchasers and potentially places water management districts at a disadvantage in attempting to maximize the return on the sale of surplus land.

Section 3. This act shall take effect on the same date that HB 703 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 705 (2018)

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: Natural Resources & Public Lands Subcommittee

Representative Burgess offered the following:

**Amendment (with title amendment)**

Between lines 49 and 50, insert:

Paragraphs (a) and (b) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Remove line 6 and insert:

under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 705 (2018)

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: Natural Resources & Public Lands Subcommittee

Representative Burgess offered the following:

**Amendment**

Remove lines 43-45 and insert:

disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land to potential purchasers: